# ANNUAL REPORT 2012

**Labour Relations Board**

# BRITISH COLUMBIA

# LABOUR RELATIONS BOARD

# 2012
# ANNUAL REPORT

**Ministry of Jobs, Tourism and Skills Training and**
**Minister Responsible for Labour**
**Honourable Shirley Bond, Minister**

June 17, 2013

The Honourable Shirley Bond
Minister of Jobs, Tourism and Skills Training
and Minister Responsible for Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Honourable Minister:

RE: Labour Relations Board 2012 Annual Report

I am pleased to forward the 2012 Annual Report of the Labour Relations Board for the year ending December 31, 2012. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,
LABOUR RELATIONS BOARD

Brent Mullin
Chair

Enclosure

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## CHAIR'S MESSAGE

There were two matters of particular note at the Labour Relations Board in 2012. The first was the appointment of four new Vice-Chairs: Jim Carwana, Richard Longpre, and Leah Terai in May, and Jitesh Mistry in December. All four bring tremendous experience, professionalism, competence, and promise to the Board. We are appreciative of their appointments and thank them for coming to the Board. We look forward to the contribution they will be making to the Board and labour relations in British Columbia.

The second matter of particular note was the issuing of a ministerial regulation establishing timelines for Board decisions. In 2008, the Legislature amended the *Labour Relations Code* providing the Minister with the power to set timelines for Board adjudication and make regulations relating to those timelines (Sections 128 and 159.1 of the Code, respectively). After significant consultation by the Ministry with the labour relations community, in March of 2012 the Minister issued regulations. They are formally entitled *Prescribed Time Periods for Decisions Regulation*, but are more commonly and easily referred to as the "Timelines Regulation".

The Timelines Regulation became effective September 1, 2012. It requires that adjudicative matters at the Board be decided or resolved within 180 days of the date of the filing of the complaint or application.

For the very real problems these amendments to the Code and the Timelines Regulation address, see the Chair's Message in the Board's 2008 Annual Report. As also noted there, the timelines requirement then being proposed, and which has now been adopted and implemented, was "specifically designed to force us to change the way we are doing our business". In respect to accomplishing that, it was noted that the Board looked "forward to drawing upon the experience of the parties and the skills of counsel in ensuring that we move to a more practical and timely problem-solving focus and approach".

Provision is made within the legislation for the possibility of extensions to the 180 day time period. An extension can be granted under either the "exceptional circumstances" in subsection 128(2)(b) of the Code or under the specified circumstances in Section 3 of the Timelines Regulation. The provisions in the Timelines Regulation allow for a reasonable approach to related cases, extensions while collective bargaining or settlement discussions take place, and extensions where a reasonable case management plan is put forward, which is referred to as a "time period extension plan" in the Timelines Regulation. That plan must include a timetable for the steps to be taken to complete the matter and a final date for a decision to be rendered.

All extensions must have the approval of the Chair of the Board and in practice will need a defined plan and end date for the matter.

The first 180 day period under the Timelines Regulation concluded at the end of February 2013. That first period required that all outstanding cases at the Board meet that requirement, not just those filed September 1, 2012 or thereafter. It was, therefore, a significant challenge for the parties and their counsel and the Board to meet this requirement.

In meeting this challenge, the grace period provided by the Minister between the signing of the Timelines Regulation and its effective date was of considerable assistance. However, at the end of the day it was the parties, their counsel, and the Vice-Chairs and others at the Board that met the challenge and accomplished the task. There was, at the end of February 2013, only a limited number of extensions sought and granted. All were for good reason and included reasonable case management plans and end dates, most often designed by detailed, cooperative efforts between counsel and the Vice-Chair assigned to the matter.

In short, the Timelines Regulation has been a resounding success. It has succeeded because of the careful consultation work by the Ministry and the subsequent efforts of counsel and the Vice-Chairs at the Board. I am confident that this procedural reform at the Board, which is structural in nature, will be of lasting contribution to the better practice of labour relations at the Board.

The procedural reform in the Timelines Regulation accompanies the Board's interpretation and application of the fundamental, substantive reforms to the Code starting with the Report in 1992 and subsequent amendments to the Code in 1993, and the buttressing of those amendments in 2002. For that substantive reform, see the Chair's Messages in the Board Annual Reports 2004-2006.

Of all that has been done, however, I believe the timelines reform will be the most significant and lasting development, given its structural nature and positive results.

As a final point, there remains one further matter under the Code which I would raise for the consideration of the labour relations community and the Ministry. As was the case with the impetus for timelines reform at the Board, it begins with anecdotal experience. Again though, as with the Board, this anecdotal experience could be augmented if necessary by specific study as it was with the Board's processes (see the Chair's Message in the Board's 2008 Annual Report).

The anecdotal experience is that of some of the leading arbitrators in the province, who relate that a significant number of the hearings before them are of much greater length than ever before and result in much greater delay than ever before.

This is not a unique experience in litigation (see the 2008 Chair's Message regarding the Courts', as well as the Board's, experience of increased length and

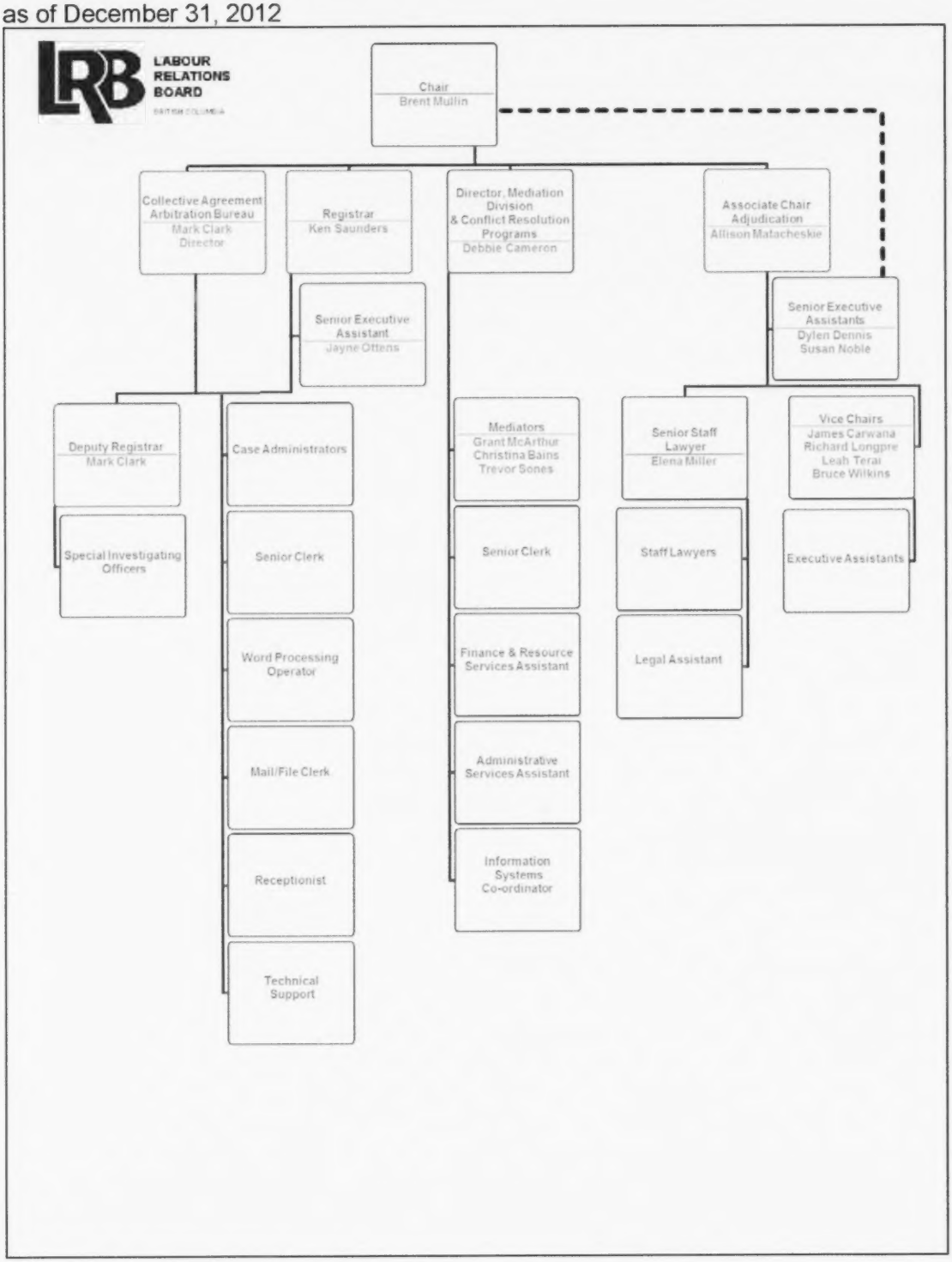
delay in litigation). However, the arbitration system in Part 8 of the Code was specifically designed to be, and was at its outset, less "formal, time-consuming, and expensive" than usual litigation (see Paul Weiler, *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto: Carswell, 1980) at 92). Thus the problem of increasing delay in the arbitral system is a particularly acute matter demanding a response.

The problem is exemplified by the experience of one of the largest unions in the province. Within its significant labour relations experience, it advises that it takes on average a year and a half for a terminated employee to receive an arbitration decision in respect to the termination. This presents grave, practical difficulties for a terminated employee who feels the termination is unjust and is not consistent with the original intent and operation of Part 8 of the Code.

Given this situation, my view is that a timelines reform to the arbitration system under Part 8 of the Code, similar to the Timelines Regulation at the Board, should be considered and pursued.

Brent Mullin
Chair

as of December 31, 2012



# I. THE BOARD

## A. GENERAL OVERVIEW

The *Labour Relations Code* (the "Code") establishes the Labour Relations Board. The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents. In addition to administering and enforcing the Code, the Board is charged with the responsibility for labour relations matters under several other statutes.

In carrying out its mandate, the Board must have regard to the manner in which it performs its duties under the Code. These are set out in Section 2:

2. The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that
(a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
(b) fosters the employment of workers in economically viable businesses,
(c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
(d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
(e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
(f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
(g) ensures that the public interest is protected during labour disputes, and
(h) encourages the use of mediation as a dispute resolution mechanism.

In order to accomplish this expansive mandate, the Code establishes the Board's administrative structure. Section 115(1) of the Code provides that the Board shall consist of a Chair, Vice Chairs, and as many other members, equal in number, representative of employers and employees respectively, as shall be considered necessary and appointed by the Lieutenant Governor in Council. The Chair is the head of the Board. The Chair designates one of the Vice Chairs to act as Associate Chair, Adjudication, one to act as Associate Chair, Mediation and one to act as the Registrar. The Chair, along with the Associate Chair, establishes panels to proceed with applications or complaints under the Code. Panels may be composed of the Chair, Vice Chair(s), and members in accordance with Section 117(5) of the Code.

## B. OFFICE OF THE CHAIR

As head of the Board, the Chair has the ultimate responsibility to oversee the administration of the Board and the Code. The Associate Chair of Adjudication, Associate Chair of Mediation, and the Registrar report directly to the Chair. The Chair may sit as a panel, either with or without Vice Chairs and/or other members. The Chair presides at proceedings of the Board and on all panels of which the Chair is a member.

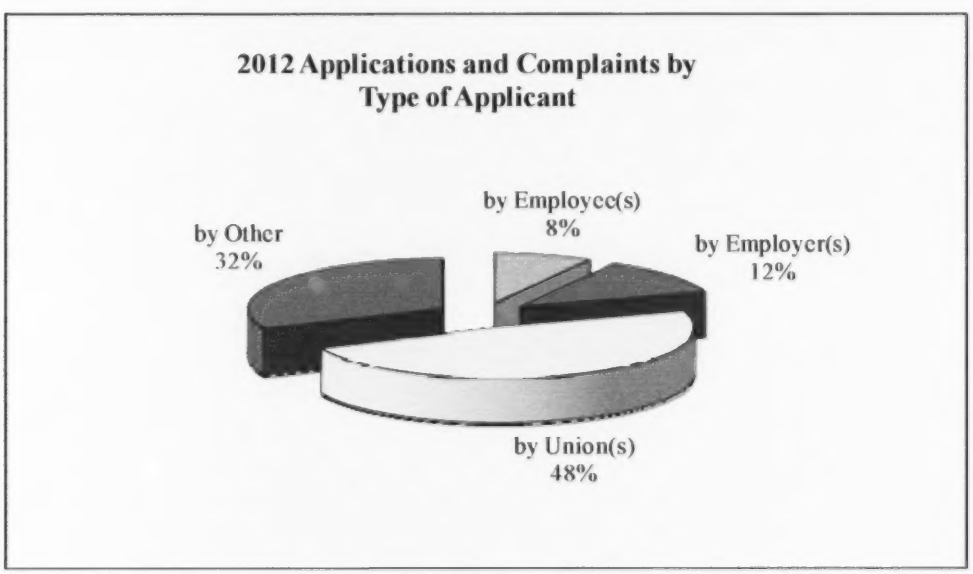
## C. REGISTRY

Every application received by the Board is processed through the Registrar's office. Administration and progress of each case is overseen by the Registry until the matter is finally disposed of. Three Case Administrators are responsible for initiation of applications and the conduct of files.

Processing of all applications through the Registry enables the Board to utilize computerized case monitoring/management to achieve effective and speedy processing of cases.

Legislated time frames, combined with established Board policies and procedures, result in approximately 55 percent of applications receiving expedited processing. Part 5 applications can require adjudication within 24 hours. Certain unfair labour practice complaints require commencement of a hearing within three days. Others such as certification and decertification applications are normally processed within approximately one week of receipt.

On certification and decertification applications, Case Administrators are responsible for completing all necessary procedures before files are forwarded to adjudication for a hearing. This includes written notification to parties, initiation of investigations by Industrial Relations Officers (IROs) and requests for written submissions. Accordingly, administrative staff must be familiar with legal principles and Board case law and policies.



Informal dispute resolution is an important part of the Board's operations and is used extensively during the processing of applications and complaints. Under the direction of the Deputy Registrar, cases requiring immediate informal dispute resolution are assigned to Special Investigating Officers (SIOs). The vast majority of their caseload involves expedited matters such as unfair labour practice complaints, certifications, and Part 5 applications dealing with strikes, lockouts and picketing.

Assistance by SIOs through the informal process can be obtained by the parties or the adjudicator at any stage of proceedings, including case management meetings and after formal hearings have commenced.

These informal settlement discussions are on a "without prejudice" basis. That is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However, settlement agreements reached on issues during the informal proceedings are binding on the parties and will be enforced by the Board.

The informal process achieves a very high success rate. As shown in Table 9 of the statistical tables, approximately 56 percent of unfair labour practice complaints and Part 5 complaints referred to SIOs are settled.

This informal dispute resolution process helps the Board and the parties make more effective use of resources and personnel, and substantially reduces the time needed to conclude cases, thus reducing expenditures. In addition, by fostering negotiated settlements between the parties, the process furthers the purposes of the Code by minimizing, where possible, decisions imposed by a third party.

Similar valuable services are provided throughout the Province by Industrial Relations Officers (IROs) of the Employment Standards Branch of the Ministry of Jobs, Tourism and Skills Training and Minister Responsible for Labour. For example, every application for certification or decertification requires a report by an IRO.

Both SIOs and IROs also provide considerable assistance through written reports which may involve fact finding, narrowing the issues to be adjudicated, and interviewing individual employees and employers on a wide variety of issues.

In addition to administering the Registry, the Registrar, as a Vice Chair of the Board, may chair or sit as a member of an adjudication panel, and as a sole panel member, may dispose of certain applications where summary disposition is appropriate. This leads to the speedy disposition of many types of applications.

The Deputy Registrar has responsibility for administering the informal process and also deals with Section 12, duty of fair representation applications, most of which require additional information before the Registry can process them.

Section 122(3) of the Code requires the Board to provide an Information Officer. The Information Officer's responsibilities to date have encompassed two main areas: handling incoming inquiry calls and preparing written material for the public and the labour relations community.

The Information Officer deals with approximately 4000 phone calls and email enquiries per year from employers, unions, individual employees and media representatives.

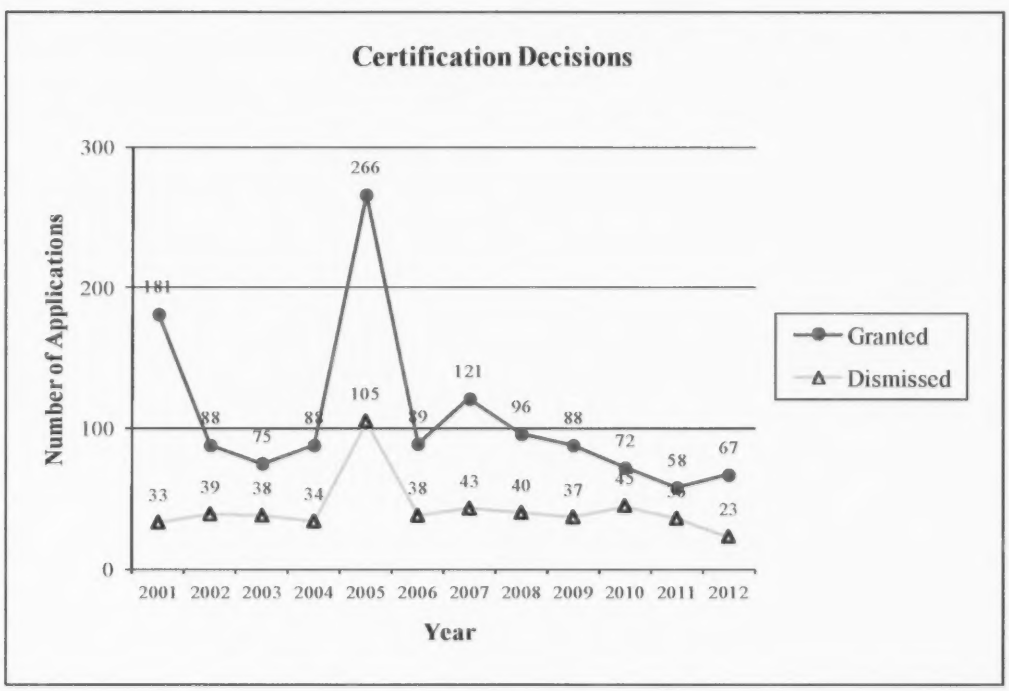
The Board's publications include the *Employer's Guide to the Union Certification Process*. This plain language guide is sent to employers along with the Notice of Certification Application, to clarify their rights and responsibilities under the Code. The same day the Information Officer sends a letter to employers who have not previously been certified, offering to answer any questions about the Code or certification procedures before the hearing date or on the morning of the certification hearing.

A companion publication, *Questions and Answers for Employees Regarding the Union Certification Process*, has been developed following an extensive consultation process with the labour relations community. It provides information to employees in plain language concerning the certification process.

Another publication prepared by the Information Officer, the Board's Practice Manual, has been in use since April, 1995.

The Board's website was officially launched in late 1999. The site includes information concerning the Board's processes, hearing schedules and recent Board decisions. The site is a work-in-progress and the Board welcomes input from the public to help improve the information provided. The website address is www.lrb.bc.ca

The Board has also prepared a *Section 12 Guide* explaining the Board's approach to Section 12 complaints. It is available on our website under "Information Bulletins" or upon request in written form.



## D. COLLECTIVE AGREEMENT ARBITRATION BUREAU

Effective July 5, 2002, and pursuant to the *Labour Relations Code Amendment Act, 2002*, the Collective Agreement Arbitration Bureau was brought under the administration of the Labour Relations Board. Pursuant to Section 83(1) of the Code, the Chair designated the Board's Deputy Registrar, Mark Clark, as Director of the Bureau.

The primary function of the Bureau is to appoint arbitrators where one of the parties seeks an expedited form of arbitration, where the parties seek consensual mediation/arbitration, or where there is a failure to appoint or constitute an arbitration board by one of the parties. In addition, the Bureau also appoints settlement officers to assist the parties in resolving grievances filed under collective agreements. The Labour Relations Board offers the services of its Special Investigating Officers and Mediators as settlement officers to assist the parties in resolving the grievances prior to an arbitrator's appointment by the Bureau.

Since July 5, 2002, applications filed with the Bureau for the appointment of arbitrators and/or settlement officers are processed through the Registry of the Labour Relations Board. The Registry's Case Administrators are generally responsible for the day-to-day administrative processing of the applications, with the Director responsible for the selection/appointment of the arbitrator in each case.

The Bureau, through its Director, must also maintain a register of arbitrators. A Joint Advisory Committee, as appointed by the Minister, must advise the Director on the training and education of arbitrators and settlement officers, research and publication of information about arbitrations, and establishment and maintenance of a register of arbitrators.

The Joint Advisory Committee comprises two representatives of unions, two representatives of employers and two representatives of arbitrators, along with the Director who is the chair of the committee.

## E. ADJUDICATION DIVISION

The Adjudication Division is responsible for hearing and deciding applications brought under the Code. The Division also attempts wherever possible to settle disputes without formal adjudication through case management and alternative dispute resolution.

Issues requiring adjudication include applications for the acquisition and termination of bargaining rights; unfair labour practice complaints; duty of fair representation complaints by individual employees; common and successor employer applications; reviews of arbitration awards; complaints respecting strikes, lockouts, picketing and other conduct regulated by Part 5 of the Code, including the replacement worker and essential services provisions; and applications for reconsideration of Board decisions.

On average, close to 700 cases are adjudicated each year. A comparison of cases assigned for adjudication and adjudicated for the past several years is set out in the accompanying table. In 2012, the Adjudication Division published 279 decisions. Summaries of some of the noteworthy decisions can be found in Section III of this Report.

A major portion of the Division's workload continues to be adjudication of expedited applications (including certifications, unfair labour practice and Part 5 applications). During 2012, expedited applications comprised about 67 percent of cases received in the Board's major adjudication areas.

As of December 31, 2012, the Board had 4 Vice Chairs and 3 Staff Lawyers.

| | 2003* | 2004* | 2005* | 2006* | 2007* | 2008* | 2009* | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|---|---|---|---|---|
| Cases Assigned for Adjudication | 890 | 1091 | 823 | 735 | 815 | 638 | 679 | 634 | 734 | 1291 |
| Cases Adjudicated | 889 | 922 | 1006 | 781 | 782 | 664 | 672 | 642 | 697 | 1344 |
| Cases Outstanding at Year End | 240 | 409 | 226 | 180 | 213 | 187 | 194 | 186 | 223 | 170 |

* Figures adjusted after publication of *LRB Annual Report* for noted year(s).

## F. MEDIATION DIVISION

The Mediation Division offers assistance in collective bargaining, facilitation of joint sessions which enable employers and trade unions to improve their working relationship, and collective bargaining information. The head of the Mediation Division is the Director of Mediation and Conflict Resolution Services.

Information about the services available from the Mediation Division can be obtained via the Board's website (www.lrb.bc.ca). This information includes various practice guidelines on the sections of the Code administered by the Mediation Division.

### *Collective Bargaining Mediation (Sections 55 and 74)*

Collective bargaining mediation involves assistance to employers and unions to conclude the terms of first or renewal collective agreements. Mediators utilize a variety of techniques in an effort to assist the parties to reach mutual agreement. In certain cases, the mediator may issue recommendations for settlement.

Most mediation appointments are made under Section 74 of the Code and involve the renewal of existing collective agreements. A lesser number of first collective agreement mediator appointments are made under Section 55.

Section 55 is specific to first collective agreements and confers on the Mediator greater responsibility for mediation outcomes within tightly prescribed time frames. Access to this provision can only be gained if the trade union has taken a strike vote and a majority of the employees have voted in favour of a strike.

In 2012 Board mediators were appointed to 131 cases under Section 74 and 7 cases under Section 55. Mediators were also involved in 28 cases carried over from previous years.

Most public sector collective agreements expired on March 31, 2012. Consequently, a significant number of the Section 74 applications involved providing assistance to parties captured by the 2012 PSEC mandate.

***Essential Services (Section 72)***

The mediation of essential services in certain disputes involving the health, safety or welfare of the residents of British Columbia is also part of the mandate of the Mediation Division.

The expiry of the Health Care Bargaining Association agreements with the Health Employers Association of BC (HEABC) as well as many other public sector employers meant that mediation resources were deployed in this capacity for a substantial part of 2012.

The process of finalizing orders within HEABC authorities and affiliates was complex due to the implementation of many organizational and structural changes since the 2006 round of essential service designations. Additionally, the introduction of new technology designed to centralize and distribute employer plans, upload finalized plans, and distribute completed ESD orders presented some implementation and skill adaptation challenges.

HEABC, Bargaining Association, and LRB stakeholders agreed early in the designation process to conduct a post-mortem in 2013 to review firsthand accounts of processes, experiences, opinions, and results, for the purpose of continuous improvement.

***Conflict Management***

The Mediation Division provides conflict management initiatives, not only in keeping with its mandate under the Code, but also with a view to designing individualized and relevant programs. The focus of the programs places greater emphasis on the analysis of conflict and its ongoing management in the workplace.

At the joint request of employers and trade unions, the Mediation Division consults with the parties in an effort to understand the nature and role of conflict in the parties' organization. Current methods of dispute resolution are also examined in the context of the organizational culture within which they operate. The Mediation Division works with the stakeholders to design and implement conflict management processes that focus on systemic change.

Guidelines used in the design process include: stakeholder participation, the adoption of preventative methods of alternative dispute resolution including training in interest based problem solving; the use of interest based and rights based processes; and promotion of dispute resolution throughout all levels of the organization. Openness and broad-based participation are encouraged and emphasis is also placed on the importance of feedback and continuous self-evaluation.

***Relationship Enhancement***

One of the forums for exploring conflict and designing conflict management systems has been the Relationship Enhancement Program "REP". The program originally designed as a two-day exploratory retreat, has been refocused to place greater emphasis on

skills in effective communication and interest based problem solving.

In a preliminary assessment, the Mediation Division determines if the parties are committed to make the changes needed in their relationship to foster a more positive climate in the workplace. The assessment is conducted through various forms of information gathering, including confidential interviews, meetings, surveys, and/or focus group discussions. Following the initial assessment, a representative sampling of the stakeholders attends a two or three-day session conducted away from the workplace. Two mediators normally facilitate the session. Participants receive skills training, identify conflicts affecting their relationship, and collectively develop strategies to address and manage the identified conflicts. These strategies take the form of written action plans with specific goals, time frames for achieving the goals and assignment of specific individuals who are responsible for ensuring that action plans are carried out.

The program has been modified to place greater emphasis on monitoring and follow up, based on research gathered in cooperation with Dr. Tom Knight at the UBC Sauder School of Business.

***Labour Management Consultation Committees***

Section 53 of the Code requires employers and unions to establish joint consultation committees to promote the cooperative resolution of workplace issues. Using some of the same conflict management techniques described above, the Mediation Division offers assistance to employers and unions in meeting this obligation. Assistance is offered for the establishment of new committees and/or improvement in the effectiveness of existing committees. These sessions are usually scheduled for half a day to a maximum of one day, depending on the needs of the parties.

***Mediation Process Workshop***

Based on broad consultations with the Labour Relations Community for the purpose of exploring avenues to enhance problem solving capacity, the Mediation Division developed a three-day workshop curriculum on mediation process.

The workshop's foundation is based on a collaborative learning model featuring multiple perspectives on subject material. Sessions were held in 2011, and January of 2012. Equal numbers of management and union representatives registered and, given demand, further sessions are anticipated.

The curriculum addresses the following learning outcomes:

- Enhanced problem solving by understanding the role of perception in an individual's sense of procedural justice.
- Identification of skills and strategies needed to develop and model to improve trust and build rapport.
- Identification of greater opportunities for settlement using problem solving strategies and methods.
- Understanding how cognitive biases and group dynamics impede opportunities for settlement.
- Greater confidence in managing emotionally charged conflicts by developing the skills and attributes needed to facilitate productive settlement discussions.
- Effective preparation for and utilization of the mediation process.

## G. ADMINISTRATION

***Information Systems***

The principal computer applications contained on the in-house computers run in the following areas: case management, word processing, office automation and end user computing, statistical collection and distribution, and computer aided research.

***Finance and Administration***

The Finance and Administration Department is responsible for human resource matters including recruitment, payroll and benefits administration, financial management including budget, accounts payable/accounts receivable and is also responsible for all security and facilities matters.

***Office and Technical Support***

All Board departments are ably assisted in the performance of their duties by various office and technical support staff. These include technical support persons, word processors, executive assistants, and administrative support personnel.

# II. BOARD MEMBERS AND MEDIATORS

**As of December 31, 2012, the Board consisted of the following members:**

## EXECUTIVE

**BRENT MULLIN**, *Chair*

Brent Mullin's education includes a B.A. from the University of Victoria, an M.A. from Queen's University at Kingston, Ontario, and an LL.B. from the University of British Columbia. From 1983 to 1992 he practised labour relations, employment and human rights law in Vancouver, British Columbia at Russell & DuMoulin (now Fasken Martineau). From 1992 to 1998 he served as a Vice Chair at the British Columbia Labour Relations Board, then returned to the practice of labour law at Fasken Martineau DuMoulin. In January 2002, he was appointed Chair of the British Columbia Labour Relations Board and in August 2002, he was also appointed Chair of the Employment Standards Tribunal.

**ALLISON MATACHESKIE,** *Associate Chair, Adjudication*

Allison Matacheskie received her LL.B from the University of Ottawa in 1989. She practiced labour law exclusively representing unions with the exception of two periods when she practiced criminal law. From 1992 until 1994 she was crown counsel prosecuting at the provincial court level and from 2002 until 2004, she again worked for the Ministry of Attorney General as a special assignment prosecutor. In January 2004, she was appointed as a Vice Chair and in February 2010, she became the Registrar of the Labour Relations Board. In June 2012, she was appointed as Associate Chair, Adjudication.

**KEN SAUNDERS,** *Vice Chair and Registrar*

Ken Saunders obtained a Bachelor of Arts degree from Simon Fraser University in 1987 and a Bachelor of Law degree from the University of British Columbia in 1990. Following graduation, he acted as Assistant Director of the Hospitality Industrial Relations Employers' Association where he was responsible for grievance arbitration and Labour Relations Board matters. In 1996, he joined the Community Social Services Employers' Association until his appointment as a Vice Chair in October 2000. At CSSEA he headed the Dispute Resolution and Research Services Department and acted on behalf of member agencies in Labour Relations Board, Employment Standards, Human Rights and collective agreement arbitration proceedings. On October 11, 2000, Ken was appointed as a Vice Chair of the Labour Relations Board. In June 2012, he was appointed Registrar.

## VICE CHAIRS

**JAMES CARWANA,** *Vice Chair*

James Carwana has a B.A. and LL.B. from the University of Toronto. He was called to the Bar of British Columbia in 1985 and practiced labour relations, employment, and education law in Vancouver for over 25 years. During his time in private practice, Jim represented both employers and employees while working at Campney & Murphy, Harris & Company and Coutts Pulver. Jim has acted as counsel before the Labour Relations Board, and other tribunals, and all levels of court. He was appointed as a Vice-Chair effective May 31, 2012.

**RICHARD LONGPRE,** *Vice Chair*

Richard Longpre obtained his B.Com degree from the University of British Columbia in 1976. He bargained collective agreements for Noranda in Ontario, Saskatchewan and B.C. until 1981 when he started as a BC provincial mediator. From 1985 to 1996, he was a Vice Chair at the Labour Relations Board and Industrial Relations Council. Following a few years as an independent arbitrator and mediator, he became the Vice President of the Canadian Film and Television Producers Association in B.C. In 2001, he was appointed the Assistant Deputy Minister in the Industrial Relations Ministry. Since 2004, he consulted in various areas of labour relations including the Program Director for the B.C. Container Truck Dispute Resolution Program for the Ministry of Transportation. He was appointed Vice Chair in September 2012

**LEAH TERAI,** *Vice Chair*

Leah Terai obtained a B.A. and L.L.B. from the University of British Columbia. She articled and was called to the Bar in 1990 while working at Rankin & Company. In 1993 she began the practice of labour law with Laughton & Company, representing unions before various tribunals and at court. She was appointed as a Vice-Chair in June 2012.

**BRUCE WILKINS,** *Vice Chair*

Bruce Wilkins was introduced to labour relations while studying at the University of Toronto for his B.A. in philosophy. While attending the University of Toronto and working at the library, he became a steward and then the Chief Steward of CUPE Local 1230. After obtaining his B.A. he went to law school and graduated from Queens University Law School in 1997. He articled at Victory Square Law Office, a firm which exclusively represents unions, and was called to the Bar in 1998. He worked for two years as Crown Counsel in traffic and criminal prosecutions. He returned to the labour relations community as in-house counsel for the Health Sciences Association of British Columbia, representing the union in arbitrations, Labour Relations Board proceedings and professional discipline hearings. He was appointed as a Vice Chair in May 2007.

## MEDIATORS

**DEBBIE M.L. CAMERON**, *Director, Mediation Division and Conflict Resolution Programs*

Debbie Cameron is the Director of Mediation and Conflict Resolution Programs at the BC Labour Relations Board. Ms. Cameron started at the LRB in 1994 as a Mediator, and in 2007, became the Director of Conflict Resolution Programs. Ms. Cameron assumed responsibility for the Mediation Division on February 1, 2010. Prior to the LRB, Ms Cameron was the Coordinator of Hospitals for the B.C. Nurses' Union responsible for collective agreement negotiation and administration covering approximately 17,000 nurses in BC. Ms. Cameron has a Certificate in Conflict Resolution from the Justice Institute of British Columbia, a Certificate in Intercultural Studies from the University of British Columbia, an M.A. in Conflict Analysis and Management from Royal Roads University, and a Provincial Instructor Diploma from Vancouver Community College.

**GRANT McARTHUR**, *Mediator*

Grant McArthur graduated from the University of British Columbia in 1973. He worked for the Hospital Employees' Union for approximately five years. He then joined the Labour Relations Board as a Special Investigating Officer in 1980 and left to work for Canada Post in late 1984. Grant joined B.C. Rail in 1986, where he worked in labour relations and as Manager of Personnel Services for three years prior to returning to the Board in 1992.

**CHRISTINA BAINS,** *Mediator*

Christina Bains is a Mediator with the British Columbia Labour Relations Board. Christina has a B.A. in Sociology from Simon Fraser University and a Human Resources Post-Diploma from the British Columbia Institute of Technology. Christina spent several years working in Employee Relations for B.C. Ferries providing direct support to approximately 1,000 employees, facilitating workshops as well as developing outreach initiatives to build relationships with various public and private sector groups on Vancouver Island and the mainland to support province wide recruitment. Christina has also spent some time with the British Columbia Post Secondary Employers' Association, the Health Employers Association of British Columbia and the British Columbia Government Employees' Union where she was involved in several public sector and private sector negotiations.

**TREVOR SONES,** *Mediator*

Trevor Sones is a Mediator with the B.C. Labour Relations Board. Trevor has an Honours B.A. in Criminology with a concentration in Law from Carleton University, in addition to an M.A. in Dispute Resolution from the University of Victoria. While specializing in the field of Alternative Dispute Resolution, Trevor has published a book and a peer-reviewed journal article on the role of conflict and conflict resolution processes.

# III. HIGHLIGHTS OF BOARD DECISIONS

In 2012, the Adjudication Division published 279 numbered decisions. The following are summaries of some noteworthy decisions issued during the year. These summaries are provided for interest only, and they do not constitute legal or authoritative interpretations of the decisions in question. The full text of these and other Board decisions are available on its website (www.lrb.bc.ca).

***PCL Constructors Canada Inc.***, BCLRB No. B15/2012, 205 C.L.R.B.R. (2d) 48 – It was argued to an original panel that she was disqualified from hearing the matters before her because a statement allegedly made by the Associate Chair of the Board in the context of a mediation/adjudication process gave rise to a reasonable apprehension of bias against all adjudicators at the Board. The original panel rejected this argument, finding that an allegation of bias against another member or members of the Board did not necessarily establish that all members of the Board were disqualified due to a reasonable apprehension of bias. On the facts alleged, the panel found that an informed, reasonable and right-minded person, viewing the matter realistically and practically, would not conclude that she was disqualified from hearing the matters before her due to a reasonable apprehension of bias.

***Certain Employees of Sidhu & Sons Nursery Ltd.***, BCLRB No. B28/2012, 207 C.L.R.B.R. (2d) 1 (Leave for Reconsideration denied, BCLRB No. B26/2013) (application for judicial review filed) – Certain Employees filed an application for decertification, in respect to which the Union filed complaints alleging unfair labour practices and improper interference against the Employer and Mexico. Mexico raised a preliminary objection to the unfair labour practice complaints filed against it, arguing that the *State Immunity Act*, R.S.C. 1985, c. S-18 immunized it from the proceedings before the Board. The panel concluded that Mexico had not waived statutory immunity and that statutory exceptions to immunity did not apply in the circumstances. Accordingly, the panel dismissed the unfair labour practice complaints against Mexico on the basis of state immunity. However, it found that evidence concerning the actions of Mexico could be heard in relation to other matters before it.

***Westlake Paving and Aggregates Ltd.***, BCLRB No. B34/2012, 209 C.L.R.B.R. (2d) 258 (Leave for Reconsideration of BCLRB No. B116/2011, 197 C.L.R.B.R. (2d) 199) – The *B.A.T. Construction* 30/30 rule for determining employee status in the construction industry applies where there is either no collective agreement or a collective agreement is in place but it contains no rights of recall. The 30/30 rule is intended to allow the parties and the Board to determine with certainty and objectivity who is entitled to participate in a certification application. Here, there was a collective agreement in place but it gave no individual, seniority-based right of recall, only a general right for existing employees to be recalled before any new employee was hired. Such a right of recall was found to be too uncertain for a determination of employee status, and accordingly the 30/30 rule applied in the circumstances.

***Certain Employees of RJ Healthlink Ltd.***, BCLRB No. B42/2012, 208 C.L.R.B.R. (2d) 136 (Reconsideration of BCLRB No. B135/2011, 198 C.L.R.B.R. (2d) 208) – When considering whether an impugned statement or impugned conduct is coercive or intimidating within the meaning of the Code, it is not sufficient merely to find it is not a threat. A threat is a species of coercion, but is not a

precondition to a finding of coercion under Sections 8 or 9 of the Code.

***Pacific Newspaper Group Inc.***, BCLRB No. B46/2012, 207 C.L.R.B.R. (2d) 293 (application for judicial review filed) – The Board rejected an argument that it could only refuse to make an order under Part 5 of the Code if there has been a finding of improper conduct by the person applying for the order. It found Sections 71 and 133(1)(c) of the Code are enabling and clarifying provisions, not jurisdiction-limiting provisions. The Board found Section 71 does not restrict the Board's exercise of judgment and discretion under Section 70 of the Code. Accordingly, the Board may refuse to provide a declaratory opinion under Section 70 for reasons other than the improper conduct of the person applying for the order. Section 70 does not provide jurisdiction to find a contravention of the Code or provide a basis upon which a Section 70 applicant can seek damages.

***0910196 B.C. Ltd.***, BCLRB No. B52/2012, 207 C.L.R.B.R. (2d) 192 – The Employer purchased a business and became a successor employer. On the same day, it served Section 54 notice on the Union stating it would be shutting down its operations and laying off the members of the Union in 14 days. The Union argued the Employer breached Section 54 by failing to give the minimum statutorily required 60 days notice before closing down the business and laying off all of the employees in the bargaining unit. The Employer argued the parties had negotiated and agreed upon severance pay provisions in the collective agreement which applied in the event of a plant closure. In these circumstances, it submitted it should not be found to be in breach of Section 54. However, the panel found that even where the parties have negotiated collective agreement provisions to apply in the event of a plant closure, this does not eliminate the need and purpose of Section 54 discussions. For example, under Section 54, the parties may discuss alternatives to closure. The panel found Section 54 obligations operate independently of collective agreement obligations. In the circumstances, the panel found the Employer had breached Section 54 when it gave only 14 instead of 60 days notice of its plan to shut down its operations. As a remedy for the breach, the Employer was ordered to pay each of the Union's members 46 days of wages and benefits – the difference between the notice the Employer ought to have given and the notice the Employer actually gave.

***Peter Ross 2008 Ltd.***, BCLRB No. B59/2012, 208 C.L.R.B.R. (2d) 200 (Reconsideration of BCLRB No. B187/2011, 201 C.L.R.B.R. (2d) 178) – The original panel was found to have erred in concluding that remarks by the Employer to a vulnerable employee group in a captive audience meeting a short time before the certification vote was to take place were not coercive or intimidating because it did not directly threaten employees' job security. The reconsideration panel held that a threat to job security does not need to be direct in order to be coercive or intimidating. Implied threats can be equally coercive or intimidating. In the circumstances, the reconsideration panel found the Employer's remarks were coercive and intimidating and remitted the matter to the original panel for a fresh determination.

***Ansan Industries Ltd. (Ansan Traffic Control)***, BCLRB No. B64/2012 (Leave for Reconsideration denied, BCLRB No. B98/2012) – The Employer sought review under Section 99 of an arbitrator's decision that he was not disqualified from hearing a matter on the basis of a reasonable apprehension of bias. The apprehension was said to have arisen from the Employer's discovery that the arbitrator's sister owned a rival business to the Employer's. After considering the law with respect to reasonable apprehension of bias, the panel concluded that a reasonable apprehension of bias did not arise in the circumstances. An informed person, viewing the matter realistically and practically, and having thought the matter through, would not conclude that it was more likely than not that

the arbitrator, consciously or unconsciously, would not decide the matter before him fairly. In reaching this conclusion, the panel noted that the Employer did not allege that the sister's business would necessarily be affected by the arbitrator's decision in the matter before him, and it was not asserted that the arbitrator himself had any pecuniary interest in his sister's business.

***Helena Joanna Bulthuis***, BCLRB No. B71/2012, 209 C.L.R.B.R. (2d) 226 – This decision reviews the Board's jurisprudence under Section 17 of the Code, the "religious exemption" provision. In this case, some of the reasons the individual gave for objecting to union membership could be characterized as political or moral rather than strictly religious reasons, or as objections to particular union actions such as striking. However, when the application was read as a whole, it met the Board's test for granting an exemption for union membership on the basis of religious conviction or belief. The Board has emphasized that, in deciding whether to grant an exemption, it is not assessing the reasonableness of the applicant's personal religious beliefs, as long as the objection to union membership is based on sincerely held personal religious beliefs.

***Viking Air Limited***, BCLRB No. B87/2012, 212 C.L.R.B.R. (2d) 9 (Reconsideration of BCLRB No. B18/2012, 207 C.L.R.B.R. (2d) 313) – The Union alleged the Employer breached Section 6(1) of the Code when it refused to provide the Union with the email addresses of its bargaining unit members. The reconsideration panel noted that it is a breach of Section 6(1) for an employer to refuse, without a sound business reason, to provide the union with information which the employer can easily supply and which the union needs to fulfill its statutory obligation to represent its members. Here, the Employer could easily supply the email addresses it had, and had not given a sound business reason for not doing so. While the original panel found that the email addresses were not needed for the Union to fulfill its statutory representation obligation, the reconsideration panel found it was inconsistent with Code principles not to order that the email addresses be provided in these circumstances. Provision of the email addresses would facilitate efficient communication between the Union and the bargaining unit employees, which is important for the furthering of Code rights, obligations and purposes.

***Attorney General of British Columbia and the Ministry of Justice***, BCLRB No. B92/2012, 211 C.L.R.B.R. (2d) 172 – BCTF applied under the *Education Improvement Act* for a declaration quashing the Minister of Education's appointment of Dr. Charles Jago as a mediator under that *Act*, or for certain declarations under Section 143 of the Code regarding his appointment as a mediator, including that it raised a reasonable apprehension of bias. The Attorney General raised a preliminary objection to BCTF's application on the basis that the Board lacked jurisdiction to quash the appointment or give the declarations sought. The Board found the legislature did not intend to give the Board exclusive jurisdiction to hear and decide a challenge to the appointment of the mediator under the *Act*. Nor did the Board have jurisdiction to review ministerial exercises of statutory powers of appointment under either the Code or the *Act*. Accordingly, BCTF's application was dismissed.

***Interior Health Authority***, BCLRB No. B97/2012, 212 C.L.R.B.R. (2d) 164 (Leave for Reconsideration denied, BCLRB No. B127/2012, 214 C.L.R.B.R. (2d) 119) (application for judicial review filed) – This decision dealt with a number of issues arising from BCNU's applications under Section 19 to represent licensed practical nurses (LPNs) employed by six Health Authorities. The LPNs were represented by the HEU, the BCGEU and the Operating Engineers. The panel found the circumstances justified making an exception to the Board's general policy against adding bargaining agents to health

sector bargaining units. After addressing several other issues, the panel allowed the applications to proceed to a mail ballot vote.

***FortisBC Energy Inc.***, BCLRB No. B140/2012 – The Employer requested that the Board add conditions to an earlier reconsideration decision that had cancelled an arbitration award and remitted the matter to a new arbitrator on the basis that new evidence had become available. As a result of the Union's position that it may or may not call the new evidence before the new arbitrator, the Employer sought to have the Board add a condition to the reconsideration decision that, if the Union did not introduce the new evidence for which the arbitration award was set aside, the original arbitration award would be reinstated. The Board found that to allow the Union to take the position that it may not call the new evidence would result in an abuse of the Board's processes under the Code. The Board granted the Employer's application and added a condition to the order for a new arbitration hearing. The condition was that the Union must call the new evidence at the new arbitration hearing, and if the Union failed to do so, it would have exhausted its available avenues to contest the grievor's dismissal under the Code.

***Roger Tailleur***, BCLRB No. B142/2012 (Leave for Reconsideration denied, BCLRB No. B164/2012) – A Claims Review Committee found the claimant was not totally disabled from all occupations on the basis of work he performed during a return-to-work trial. The Union argued the CRC erred because it failed to consider whether an actual job position would be available to the claimant. The Employer did not agree that the CRC was required to consider this question in determining whether the claimant was totally disabled. The panel held that the dispute over what the CRC had to consider was one of collective agreement interpretation and application (the meaning of "total disability" in the CRC Terms of Reference and/or the Collective Agreement). As such, the difference was one that could be pursued in grievance arbitration, but it did not fall to be decided at first instance by the Board under Section 99 in review of a CRC decision.

***Insurance Corporation of British Columbia***, BCLRB No. B143/2012, 214 C.L.R.B.R. (2d) 304 – The Union alleged the Employer failed to bargain in good faith by, among other things, tendering Section 54 notice during collective bargaining. The Employer gave the notice far in advance of the anticipated changes requiring notice under Section 54. The panel found that, while there is no specific statutory prohibition against giving Section 54 notice during collective bargaining, it is not open to a party in collective bargaining to use Section 54 as a means to block or to impede efforts to conclude a collective agreement. The panel found that had not happened in this case, but declared the Employer's refusal to bargain monetary items until the Government finished its core review process violated the requirement to bargain in good faith under Sections 11 and 47 of the Code. The Employer was ordered to withdraw its refusal to negotiate monetary items and to bargain towards a collective agreement with the Union on all issues.

***Kimco Controls Ltd.***, BCLRB No. B153/2012, 218 C.L.R.B.R. (2d) 234 – An issue in this case was whether a proposed craft unit was appropriate for bargaining where the Employer argued there was functional integration between employees in and out of the unit. The Union argued the test for a craft unit is different from the Board's *IML* test for an appropriate non-craft unit. The panel accepted that the Board has an established test for the appropriateness of proposed craft units which is different from the test for non-craft units. Functional integration between employees in craft units does not render those units inappropriate if the units otherwise meet the Board's criteria for craft unit appropriateness. In this case, the proposed unit otherwise met the Board's criteria for an appropriate craft unit, and the functional integration was

between employees in the proposed unit and other employees who could be represented in a craft unit. The fact that there was not currently an application to certify those employees in a separate craft unit did not render the craft unit that had been applied for inappropriate for bargaining.

***Duncan Dabber Bingo Society operating as Chances Cowichan***, BCLRB No. B155/2012, 216 C.L.R.B.R. (2d) 266 – The issue in this case was whether surveillance officers in a community gaming centre, who are employees within the meaning of the Code, could be included in the Union's all employee bargaining unit. The Union argued they could, noting that security officers were included in the unit. Based on the facts before the panel and previous Board jurisprudence, the panel found the surveillance officers could not be included. Unlike security officers, their job prohibited them from fraternizing with the other employees and requires them to be physically, socially and organizationally segregated from them. While surveillance officers and security officers had some common duties, these key differences made it inappropriate for surveillance officers to be included in a unit with the security officers and the other employees. Surveillance officers would require their own bargaining unit to access collective bargaining under the Code.

***Cartier House Care Centre Ltd.***, BCLRB No. B175/2012, 217 C.L.R.B.R. (2d) 234 (Leave for Reconsideration denied, BCLRB No. B265/2012, 220 C.L.R.B.R. (2d) 70) – The Employers alleged their accredited employer organization, HEABC, breached Section 12(3) of the Code by approving an amendment to the terms of the Healthcare Benefit Trust ("HBT") without consulting them. The HBT administers LTD plans collectively bargained by HEABC on behalf of its member employers. The HBT considered the amendment necessary to address an unfunded actuarial liability. The complaint was dismissed for excessive delay in filing; however, the panel found in the circumstances HEABC did not breach Section 12(3) when it chose not to consult each member before approving the amendment. The concern being addressed by the HBT in putting forward the amendment was not the individual financial interests of HBT participants, but rather preservation of the financial viability of the HBT in the interest of the participants collectively. HEABC did not act arbitrarily, discriminatorily, or in bad faith when it approved the amendment.

***Ecodyne Limited***, BCLRB No. B187/2012, 218 C.L.R.B.R. (2d) 1 (Reconsideration of BCLRB No. B81/2012, 212 C.L.R.B.R. (2d) 261) – The issue in this case was whether the raid period in Section 19(1) of the Code included the first day of the seventh month, given the provision states that an application may be made "during the seventh and eighth months in each year of the collective agreement or any renewal or continuation of it". The majority of the panel concluded the first day of the seventh month was included in the raid period. Thus, for example, for a collective agreement with a term running year to year from May 1 to April 30, the first day of the seventh month would be November 1, not November 2. The majority noted that the language of Section 19(1), which caused the first day to be included, was different from the language of other time limit provisions in the Code, the language of which indicated that the time limit would be calculated starting from the day after an application was filed or a triggering event occurred.

***United Rentals of Canada, Inc.***, BCLRB No. B197/2012, 219 C.L.R.B.R. (2d) 285 – The Employer, whose employees were represented by the Union under a collective agreement, acquired a non-union business and intermingled the two workforces. There was no dispute the intermingled workforces appropriately comprised a single bargaining unit under the Union's collective agreement. The only issue was whether the newly added employees should be "end-tailed" (placed at the bottom of the seniority list) or dovetailed

(placed on the seniority list based on the length of their non-union service). Deciding not to follow the approach taken in *Dave Wheaton Pontiac Buick GMC Ltd.*, BCLRB No. B68/2010, 178 C.L.R.B.R. (2d) 172, the panel in this case decided it was appropriate to dovetail rather than end-tail the formerly non-union employees.

***Haakon Industries (Canada) Ltd.***, BCLRB No. B232/2012, 219 C.L.R.B.R. (2d) 137 (Leave for Reconsideration denied, BCLRB No. B260/2012, 219 C.L.R.B.R. (2d) 148) – The Employer applied under Section 78 of the Code for a last offer vote. The bargaining unit consisted of one employee, and one of the proposals in the last offer was a ten-year term for the collective agreement. The Employer argued the Board could not reject its application on the basis that the bargaining unit only had one employee and also argued the Board does not have the jurisdiction to consider the merits of proposals in a last offer. The panel found the Board has the jurisdiction to examine Section 78 applications as a whole to ensure they do not undermine Code principles. The panel found the term limit proposed in the last offer was unreasonable and significantly outside the norms of collective bargaining in B.C. The panel found the lengthy term proposed was inconsistent with the statutory scheme of the Code and, in particular, inconsistent with the duty to encourage the practice and procedures of collective bargaining. Accordingly, the Employer's Section 78 application was dismissed.

***Zellers Inc. (Store# 264)***, BCLRB No. B243/2012, 219 C.L.R.B.R. (2d) 157 – The Union applied under Section 35 of the Code for a declaration that Target was the successor employer to Zellers with respect to the business carried on by Zellers at the Brentwood Mall in Burnaby, B.C. In this case there was no transfer of inventory, business processes, IT systems, employment policies, distribution networks, trade fixtures, customer loyalty programs, contracts or accounts. There was, however, a transfer of rights to leases, pharmacy records and a Brand Waiver. The panel noted a significant feature of this case was the enormous amount of evidence led regarding Target's unique position in the retail sector, its marketing strategies and the high amount of consumer recognition of its brand. The panel found that Target did not need Zellers for anything but the lease or the opportunity to negotiate a new lease in a new area of Brentwood Mall. Though employees may perform similar jobs in both stores, there was not sufficient evidence to conclude there was a discernible continuity of Zellers' business. The panel noted this was particularly the case in light of the hiatus of six months to three years between the closure of Zellers' Brentwood Store and the opening of Target's store in Brentwood Mall. Accordingly, the Union's application was denied.

***Certain Employees of Brandt Tractor Ltd.***, BCLRB No. B263/2012 (Reconsideration of BCLRB No. B192/2012, 217 C.L.R.B.R. (2d) 138) – Certain Employees and Brandt Tractor applied for reconsideration of an original decision dismissing Certain Employees' applications for partial decertification on the basis that the partial decertification applications were filed after notice to bargain had been issued. The Board held that given the balancing of concerns and interests in the Board's approach to partial decertification applications under Section 142 of the Code, the bright line approach is a general rule which should allow for exceptions in and around the time notice to bargain is given, as well as, in some other circumstances, after a sufficient elapse of time. In the circumstances of this case, in considering the facts overall, the reconsideration panel found the underlying collective bargaining rationale for the Board's bright line approach to the timing of partial decertification applications was engaged. Preparing for collective bargaining and canvassing bargaining unit employees are integral components of the collective bargaining process, as is the setting of bargaining dates after notice to bargain has been issued. As a result, the reconsideration panel found the ultimate determination in the original decision was correct.

# IV. COURT DECISIONS

1. ***B.C. Ferry and Marine Worker's Union v. B.C. Ferry Services Inc.***, 2012 BCSC 663 (under appeal) – The Union sought judicial review of the Board's decisions under Sections 99 and 141 of the Code upholding an arbitration award that removed certain employees from the Union's bargaining unit on the basis of the managerial exclusion. The Court noted that it had no jurisdiction to review the arbitration award, as that jurisdiction lies exclusively with the Board. Further, pursuant to *United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 2009 v. Auyeung*, 2011 BCCA 527, judicial review was of the Board decision denying leave for reconsideration. However, the Court held (and the parties agreed) that the Board's denial of leave pursuant to *RG Properties* effectively adopted the reasons of the Original Decision for purposes of judicial review, and accordingly, the Court could treat the Original Decision as the basis for review.

   The Original Decision rejected the Union's arguments that the arbitration award was inconsistent with Code principles because it failed to follow established Board jurisprudence on the managerial exclusion. The Original Decision distinguished between Code principles and the specific tests the Board applies in its jurisprudence (such as the current test for managerial exclusion), finding the latter are not Code principles. It also noted the parties had agreed to the process before the Arbitrator for resolving their dispute. The Court found the Board had provided a rational basis for its decision. As the Board's decision was not patently unreasonable, it dismissed the petition for judicial review.

2. ***Communications, Energy & Paperworkers' Union of Canada, (Local 298) v. Eurocan Pulp & Paper Co.***, 2012 BCCA 354 (Leave to SCC denied) – The Court of Appeal allowed the Employer's appeal of a chambers judge's decision allowing the Union's application for judicial review. The chambers judge had found the Board's Reconsideration Decision to be patently unreasonable. However, the Court of Appeal held the chambers judge erred because, instead of focusing on whether there was a rational basis for the Reconsideration Decision, he undertook his own reasoning process to decide on the correct interpretation of the award. He then permitted that interpretation to inform the balance of his decision. In doing so, he strayed to a correctness analysis. He assumed his was the only correct interpretation of the award, and then measured the reasonableness of the Reconsideration Decision by its conformity to his interpretation. In doing so, he failed to provide the required curial deference. When the Board's decision is reviewed with the proper deference, the Court of Appeal found, it provided a rational basis for the finding that the Arbitrator wrongly felt bound by the common law. Accordingly, the appeal was allowed and the Board's decision restored.

3. ***Jones v. Industrial Wood and Allied Workers of Canada, (Local 1-3567)***, 2012 BCCA 380 – In oral reasons, the Court of Appeal dismissed an appeal of a chambers judge's decision which had dismissed a petition for judicial review. The chambers judge had found the Board's decisions under review, which dismissed a Section 12 duty of fair representation complaint, were not patently unreasonable. In upholding the chambers judge's decision, the Court of Appeal found no error that would permit intervention.

4. ***Mazerolle v. British Columbia (Labour Relations Board)***, 2012 BCSC 1506 – The petitioner sought judicial review of the Board's decision dismissing her Section 12 complaint filed against the Union. The Court found it was not patently unreasonable for the Board to conclude the Union had not breached its duty of fair representation by refusing to pursue a grievance, when the petitioner changed her mind about a settlement agreement. The Court found it was open to the Board, based on the evidence before it, to conclude that the petitioner had initially agreed to the settlement but later changed her mind after the settlement agreement had been concluded. Accordingly, the petition for judicial review was dismissed.

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## EXPLANATORY NOTES TO TABLES

The following tables provide an analysis of the applications filed and disposed of in 2012. In some cases, statistics from 2011 and other years are provided for comparative purposes.

As of 2005 Table 1 of the *LRB Annual Report* includes applications and complaints "Filed Previous" and "Remainder Active". These figures help provide an overview of the active or current caseload at the Labour Relations Board.

Statistical Tables Definitions:

- **Application / Complaint**: a section or subsection of the Labour Relations Code. A 'case' may be comprised of more than one application or complaint (section);
- **Filed in Previous Year(s)**: count of applications / complaints received sometime prior to the report period and not yet disposed of at January 1 of the report period;
- **Filed in Current Year**: count of applications / complaints received in the report period;
- **Disposed of - Current**: count of applications / complaints with a final disposition in the report period (includes applications / complaints Not Proceeded With, Withdrawn, Settled, Granted, Dismissed and Other);
- **Open at Year End**: count of applications / complaints received sometime during or prior to the report period and open (not yet disposed of) at the end of the report period. These applications / complaints may be counted as Filed in Current Year or Filed in Previous Year(s), as applicable (same as column heading for 2005-2007 reports: Remainder Active).

A number of other changes have been made during past years in the statistical base used in some of the categories in Table 1. The changes have been summarized as follows for reference (in date order with most recent appearing first).

### Requests for Appointment of a Facilitator

Applications to appoint a Facilitator under Section 53 are counted as applications for the first time in the 2008 Annual Report (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications have been processed by the Board/Council prior to 2008 but have not appeared in the Annual Report Tables until now.

### Changes in Report Tables

Tables available in previous years regarding vote information for representation applications, details of Part 5 applications, and details of Mediation Officer appointments were taken out of the Annual Report in 2004. Certification cancellation information (s.33(2)) was added to tables 1A, 1B, 2 and 2A as of 2004. Other information previously included in Table 1 footnotes has been moved to related tables for ease of reference and readability.

### Applications for Collective Agreement Arbitration

The Labour Relations Board assumed the processing of these applications from the Collective Agreement Arbitration Bureau in mid-2002; however, due to technical and procedural considerations, applications under Sections 86, 87, 104 and 105 ("CAAB" applications) were counted in the Board's statistics only if received on or after January 1, 2003 (i.e., any 'outstanding' CAAB applications at the end of 2002 are not included in the Board's statistics).

### Requests for Appointment of a Mediator

Applications to appoint a mediator under Section 74 were counted as applications for the first time in the 2002 Annual Report (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications were processed by the Board/Council prior to 2002 but appeared only in the "Analysis of Mediator Appointments" Table for those years.

### Complaints of Unfair Labour Practices

Prior to 1989, complaints under Sections 2 or 3 (now Sections 5 or 6) of the legislation were not broken down by sub-section. From 1989 to 1996, complaints under each particular sub-section were counted as one complaint.

In 1996, the Board decided to revert to the pre-1989 method of counting these complaints. The change affects the statistics published as Sections 2,3 and 4 of the *Industrial Relations Act* and Sections 5,6,7 and 9 of the *Labour Relations Code*. The following table displays the statistics as they were published and as they would have been under the pre-1989 method of counting (rev).

| Type of Application | NUMBER OF APPLICATIONS OR COMPLAINTS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Year | Filed | Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | Hearing Held |
| Other Unfair Labour Practice Complaints (ss.5,6,7 and 9 of the Labour Relations Code or ss.2,3, and 4 of the Industrial Relations Act) | 1995 | 825 | 909 | 26 | 0 | 573 | 192 | 118 | 0 | 449 |
| | 1995 (rev) | 488 | 529 | 25 | 0 | 338 | 97 | 69 | 0 | 221 |
| | 1994 | 899 | 831 | 9 | 0 | 586 | 136 | 100 | 0 | 362 |
| | 1994 (rev) | 513 | 467 | 9 | 0 | 326 | 74 | 58 | 0 | 176 |
| | 1993 | 748 | 676 | 3 | 0 | 440 | 134 | 99 | 0 | 331 |
| | 1993 (rev) | 422 | 390 | 2 | 0 | 249 | 73 | 66 | 0 | 177 |
| | 1992 | 416 | 345 | 0 | 0 | 205 | 108 | 32 | 0 | 176 |
| | 1992 (rev) | 228 | 185 | 0 | 0 | 112 | 54 | 19 | 0 | 83 |
| | 1991 | 346 | 370 | 0 | 0 | 241 | 92 | 37 | 0 | NP |
| | 1991 (rev) | 187 | 199 | 0 | 0 | 135 | 44 | 20 | 0 | |
| | 1990 | 386 | 388 | 5 | 0 | 220 | 100 | 63 | 0 | NP |
| | 1990 (rev) | 229 | 225 | 3 | 0 | 124 | 62 | 36 | 0 | |
| | 1989 | 209 | 177 | 0 | 0 | 96 | 47 | 34 | 0 | NP |
| | 1989 (rev) | 123 | 118 | 0 | 0 | 61 | 36 | 21 | 0 | |

NP --Not Published

**Stay Applications**

Applications for a Stay of proceedings were counted as applications for the first time in 1993 (see Table 1: "Applications and Complaints Filed and Disposed of"). A footnote has been added to the Miscellaneous category to facilitate comparisons over time. In previous years, these applications were not counted.

**For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship**

Prior to 1989, an application regarding the inclusion or exclusion of employees from a bargaining unit was counted as one application for each employee in question if a ruling was made; if the application was withdrawn, it was counted as one application regardless of the number of employees

involved. From 1989 on, an application regarding the inclusion or exclusion of employees is counted as one application regardless of the number of employees in question and regardless of whether or not a ruling is made.

**To File an Order in the Supreme Court**

Applications to file orders in the Supreme Court were counted as applications for the first time in 1989 (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications had been processed by the Board/Council since 1974 but were not registered or counted prior to 1989.

**For an Order or Opinion Pertaining to Applications Pursuant to Part 5 (Strikes, Lockouts, Picketing, etc.)**

Prior to 1988, each application under Part 5 was counted as one application, regardless of the sections cited. One application could cover, for example, a strike or a picket or a combination of both. From 1988 on, each section and sub-section of Part 5 is counted as a separate application.

## GENERAL NOTES

For the convenience of users, the following is a brief description of some of the disposition codes used in Table 1.

- Applications and complaints granted include those where an order is issued, whether a regular order or a consent order. If an application is partially granted, it is included in this category.
- Applications and complaints dismissed include those where no violation is deemed to have occurred, where the application does not conform to statutory or regulatory time limits or where it is determined no further action is warranted.
- Applications and complaints not proceeded with include only those where the applicant has not supplied the Board with sufficient information to process the application. The application is returned but the applicant is free to reapply.
- Complaints that do not require a decision from the Board are designated settled including cases for which the applicant submits a withdrawal.

It is important to note when using these statistics that the work content embodied in individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

**TABLE 1: Applications and Complaints Filed and Disposed of in 2012 (including comparative figures for 2011)**

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Complaints of Unfair Labour Practices | | | | | | | | | | | | |
| *Complaints Regarding Internal Union Affairs (s.10)* | 2012 | 3 | 8 | 9 | 0 | 0 | 3 | 0 | 6 | 0 | 2 | 2 |
| | 2011 | 8 | 2 | 7 | 1 | 0 | 0 | 0 | 6 | 0 | 3 | 0 |
| *Complaints Regarding Duty to Bargain in Good Faith (s.11)* | 2012 | 16 | 32 | 31 | 0 | 0 | 22 | 6 | 3 | 0 | 17 | 3 |
| | 2011 | 13 | 24 | 21 | 0 | 0 | 17 | 2 | 2 | 0 | 16 | 2 |
| *Complaints Regarding Duty of Fair Representation (s.12)* | 2012 | 29 | 61 | 75 | 24 | 0 | 2 | 2 | 47[1] | 0 | 15 | 7 |
| | 2011 | 37 | 66 | 74 | 17 | 0 | 1 | 4 | 52[2] | 0 | 29 | 3 |
| *Other Unfair Labour Practice Complaints (ss.5 - 9)*[3] | 2012 | 50 | 136 | 131 | 0 | 0 | 95 | 13 | 23 | 0 | 55 | 22 |
| | 2011 | 59 | 124 | 133 | 1 | 0 | 91 | 20 | 21 | 0 | 50 | 36 |
| Religious Exemption (s.17) | 2012 | 1 | 10 | 10 | 0 | 0 | 0 | 10 | 0 | 0 | 1 | 0 |
| | 2011 | 0 | 5 | 4 | 0 | 0 | 0 | 4 | 0 | 0 | 1 | 0 |
| Certification Applications (ss.18, 19 and 28) | 2012 | 53 | 157 | 149 | 0 | 59 | 0 | 67 | 23 | 0 | 61 | 137 |
| | 2011 | 50 | 129 | 126 | 2 | 30 | 0 | 58[4] | 36 | 0 | 53 | 116 |

[1] 27 of the 47 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.
[2] 30 of the 52 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.
[3] In 1996, the Board changed the method of counting complaints under Sections 5 and 6 of the *Labour Relations Code*. Figures in this category reported prior to 1996 cannot be compared to figures in this category reported from 1996 to present.
[4] The total number of *certification applications granted* may not equal the total number of *certifications issued* in a given period. Occasionally more than one certification is issued for a single granted application, or, conversely, a single certification is issued where multiple applications for certification are granted. In 2011, 58 certification applications were granted resulting in 56 certifications being issued.

**TABLE 1: Applications and Complaints Filed and Disposed of in 2012 (including comparative figures for 2011)**

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Certification Variances (ss.28 and 142) | 2012 | 25 | 118[1] | 124[2] | 1 | 12 | 0 | 97 | 14 | 0 | 19 | 49 |
| | 2011 | 21 | 146[3] | 142[4] | 4 | 14 | 0 | 110 | 14 | 0 | 25 | 38 |
| Certification Cancellations (ss.33 and 142)[5] | 2012 | 6 | 37 | 37 | 4 | 5 | 0 | 25 | 3 | 0 | 6 | 28 |
| | 2011 | 5 | 39 | 38 | 2 | 1 | 0 | 27 | 8 | 0 | 6 | 31 |
| Cancellation of a Voluntary Recognition (s.34) | 2012 | 1 | 8 | 7 | 0 | 2 | 0 | 3 | 2 | 0 | 2 | 4 |
| | 2011 | 0 | 4 | 3 | 0 | 0 | 0 | 3 | 0 | 0 | 1 | 3 |
| Permission to Alter Conditions of Employment (ss.32 and 45) | 2012 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| | 2011 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alleged Unlawful Alteration of Employment Terms and Conditions (ss.32 and 45) | 2012 | 3 | 15 | 14 | 0 | 0 | 11 | 2 | 1 | 0 | 4 | 3 |
| | 2011 | 5 | 9 | 11 | 0 | 0 | 9 | 1 | 1 | 0 | 3 | 4 |
| Declaration of Successor Status | | | | | | | | | | | | |
| *Successor Employer (s.35)* | 2012 | 19 | 43 | 55 | 2 | 5 | 0 | 45 | 3 | 0 | 7 | 5 |
| | 2011 | 10 | 61 | 52 | 3 | 6 | 0 | 41 | 2 | 0 | 19 | 1 |
| *Successor Union (s.37)*[6] | 2012 | 2 | 21 | 22 | 0 | 0 | 0 | 22 | 0 | 0 | 1 | 0 |
| | 2011 | 1 | 28 | 27 | 0 | 0 | 0 | 27 | 0 | 0 | 2 | 0 |

[1] Includes nine partial decertification applications.
[2] Includes eight partial decertification applications. See TABLE 3.
[3] Includes six partial decertification applications.
[4] Includes seven partial decertification applications. See TABLE 3.
[5] See TABLE 3.
[6] The workload required to process applications in this category varies widely. The Board may receive one application per collective bargaining relationship or one application covering several collective bargaining relationships. This report reflects the number of applications filed and disposed of regardless of the number of collective bargaining relationships affected by those applications (any notable discrepancies are listed below).

**TABLE 1: Applications and Complaints Filed and Disposed of in 2012 (including comparative figures for 2011)**

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Common Employer (s.38) | 2012 | 8 | 8 | 8 | 0 | 6 | 0 | 0 | 2 | 0 | 8 | 1 |
| | 2011 | 8 | 20 | 20 | 0 | 13 | 0 | 4 | 3 | 0 | 8 | 4 |
| Accreditation Applications (s.43) | 2012 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2011 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Accreditation Variances (ss.43 and 142) | 2012 | 2 | 1 | 3 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2011 | 1 | 5 | 4 | 0 | 0 | 0 | 4 | 0 | 0 | 2 | 0 |
| Accreditation Cancellations (s.142) | 2012 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2011 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alleged Failure to Execute or Comply with a Collective Agreement (s.49) | 2012 | 9 | 7 | 15 | 0 | 0 | 12 | 0 | 3 | 0 | 1 | 1 |
| | 2011 | 4 | 11 | 6 | 0 | 0 | 5 | 0 | 1 | 0 | 9 | 0 |
| Facilitator (s.53(5)) | 2012 | 15 | 23 | 24 | 0 | 0 | 0 | *n/a* | *n/a* | 24[1] | 14 | 0 |
| | 2011 | 8 | 30 | 23 | 0 | 0 | 0 | *n/a* | *n/a* | 23[1] | 15 | 0 |
| First Collective Agreement (s.55)[2] | 2012 | 1 | 7 | 8 | 0 | 0 | 6 | *n/a* | *n/a* | 2[3] | 0 | 0 |
| | 2011 | 0 | 7 | 6 | 0 | 0 | 4 | *n/a* | *n/a* | 2[4] | 1 | 0 |
| Appointment of a Mediation Officer (s.74)[2] | 2012 | 27 | 131 | 126 | 0 | 7 | 107 | *n/a* | *n/a* | 12[5] | 32 | 0 |
| | 2011 | 35 | 102 | 110 | 0 | 2 | 97 | *n/a* | *n/a* | 11[6] | 27 | 0 |

[1] Facilitator appointed.

[2] The method of coding applications in these two categories changed in 2009 (a) when an application is received under the First Collective Agreement provisions of the *Code* and a Mediation Officer was previously appointed under s. 74, the s. 74 case is disposed of as withdrawn (previously coded as other); and (b) when the parties agree to settle matters by way of mediation-arbitration or arbitration, the case is disposed of as settled (previously disposed of as other or settled).

[3] For two cases, the parties were allowed to exercise their right to strike or lockout.

[4] For one case, the matter was referred to arbitration under s. 55(7); and for one case, the parties were allowed to exercise their right to strike or lockout.

[5] For nine cases, no agreement reached; and for three cases, the unit was decertified.

[6] For four cases, no agreement reached; for four cases, the unit was decertified; for two cases the business closed; and for one case, the matter was referred to arbitration under the *Fire and Police Services Collective Bargaining Act*.

**TABLE 1: Applications and Complaints Filed and Disposed of in 2012 (including comparative figures for 2011)**

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Collective Agreement Arbitration Bureau (CAAB)[1] | | | | | | | | | | | | |
| *Section 86 (Appointment of Arbitrator)* | *2012* | *13* | *86* | *88* | *0* | *33* | *4* | *n/a* | *n/a* | *51*[2] | *11* | *n/a* |
| | *2011* | *6* | *53* | *46* | *0* | *23* | *1* | *n/a* | *n/a* | *22*[2] | *13* | *n/a* |
| *Section 87 (Appointment of Settlement Officer)* | *2012* | *5* | *39* | *38* | *0* | *3* | *22* | *n/a* | *n/a* | *13*[3] | *6* | *n/a* |
| | *2011* | *3* | *32* | *30* | *2* | *2* | *17* | *n/a* | *n/a* | *9*[3] | *5* | *n/a* |
| *Section 104 (Appointment of Arbitrator)* | *2012* | *10* | *202* | *201* | *4* | *44* | *17* | *n/a* | *n/a* | *136*[4] | *11* | *n/a* |
| | *2011* | *5* | *187* | *182* | *2* | *40* | *12* | *n/a* | *n/a* | *128*[4] | *10* | *n/a* |
| *Section 105 (Appointment of Mediator-Arbitrator)* | *2012* | *0* | *2* | *1* | *0* | *0* | *0* | *n/a* | *n/a* | *1*[5] | *1* | *n/a* |
| | *2011* | *0* | *1* | *1* | *0* | *1* | *0* | *n/a* | *n/a* | *0* | *0* | *n/a* |
| ***Combined CAAB Sections*** | ***2012*** | ***28*** | ***329*** | ***328*** | ***4*** | ***80*** | ***43***[6] | ***n/a*** | ***n/a*** | ***201*** | ***29*** | ***n/a*** |
| | ***2011*** | ***14*** | ***273*** | ***259*** | ***4*** | ***66*** | ***30***[7] | *n/a* | *n/a* | ***159*** | ***28*** | ***n/a*** |
| Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss.57-67 and ss.69-70) | 2012 | 13 | 47 | 48 | 0 | 0 | 28 | 18 | 2 | 0 | 12 | 23 |
| | 2011 | 3 | 51 | 41 | 0 | 0 | 18 | 15 | 8 | 0 | 13 | 23 |

[1] These applications were included in the *LRB Annual Report* for the first time in 2003. Beginning in 2004, figures for individual sections as well as the combined totals for CAAB (ss.86, 87, 104, 105) are included in this report. In general, for this category, Withdrawn indicates withdrawal / settlement prior to any appointments and Settled indicates withdrawal / settlement subsequent to the appointment of a Settlement Officer but prior to appointment of an Arbitrator. See individual section notes regarding Other dispositions.

[2] Arbitrator appointed (recorded in previous 2004 and 2003 reports as Granted).

[3] Matter referred back to the parties under Section 87(3).

[4] Arbitrator appointed (recorded in previous 2004 and 2003 reports as Granted). For 28 cases in 2012 and 16 cases in 2011, a Settlement Officer was appointed in addition to an Arbitrator.

[5] Mediator-Arbitrator appointed.

[6] A Settlement Officer was appointed for 85 CAAB applications disposed of in 2012: 43 disposed of as Settled and 42 disposed of as Other. Of these 85 applications, 55 (65%) resulted in full and final settlement.

[7] A Settlement Officer was appointed for 60 CAAB applications disposed of in 2011: 30 disposed of as Settled and 30 disposed of as Other. Of these 60 applications, 37 (62%) resulted in full and final settlement.

**TABLE 1: Applications and Complaints Filed and Disposed of in 2012 (including comparative figures for 2011)**

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Replacement Workers (s.68) | 2012 | 1 | 5 | 4 | 0 | 0 | 3 | 1 | 0 | 0 | 2 | 1 |
| | 2011 | 0 | 3 | 2 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 2 |
| Essential Service Designations (s.72) | 2012 | 4 | 708 | 704 | 0 | 0 | 31 | 673 | 0 | 0 | 8 | 6 |
| | 2011 | 1 | 204 | 201 | 0 | 0 | 4 | 197 | 0 | 0 | 4 | 4 |
| Last Offer Vote (s.78) | 2012 | 0 | 12 | 11 | 0 | 0 | 0 | 11[1] | 0 | 0 | 1 | 0 |
| | 2011 | 0 | 11 | 11 | 0 | 0 | 1 | 10[2] | 0 | 0 | 0 | 0 |
| Review of Arbitration Award (s.99) | 2012 | 20 | 43 | 59 | 1 | 3 | 0 | 7 | 48 | 0 | 4 | 2 |
| | 2011 | 16 | 39 | 35 | 0 | 8 | 0 | 2 | 25 | 0 | 20 | 0 |
| Interim Order (s.133(5)) | 2012 | 1 | 14 | 9 | 0 | 6 | 0 | 2 | 1 | 0 | 6 | 4 |
| | 2011 | 1 | 2 | 2 | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 2 |
| File an Order in Supreme Court (s.135) | 2012 | 2 | 25 | 22 | 0 | 9 | 0 | 13 | 0 | 0 | 5 | 0 |
| | 2011 | 1 | 21 | 20 | 0 | 11 | 0 | 9 | 0 | 0 | 2 | 0 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139) | 2012 | 65 | 52 | 55 | 1 | 17 | 0 | 0 | 0 | 37[3] | 62 | 4 |
| | 2011 | 55 | 45 | 35 | 0 | 18 | 0 | 0 | 0 | 17[3] | 65 | 3 |
| Reconsideration of a Decision (s.141) | 2012 | 14 | 58 | 59 | 0 | 2 | 0 | 15 | 42[4] | 0 | 13 | 0 |
| | 2011 | 6 | 53 | 45 | 1 | 1 | 0 | 6 | 37[5] | 0 | 14 | 0 |

[1] In six cases the final offer was accepted, in three cases the final offer was rejected, and in two cases the applications were withdrawn prior to the vote.
[2] In three cases the final offer was accepted, in six cases the final offer was rejected, and in one case the ballots were not counted: BCLRB B204/2011
[3] Ruling made.
[4] For 38 of the 42 applications dismissed in 2012, leave to apply was denied.
[5] For 34 of the 37 applications dismissed in 2011, leave to apply was denied.

**TABLE 1: Applications and Complaints Filed and Disposed of in 2012 (including comparative figures for 2011)**

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Declaratory Opinion (excluding Declaratory Opinions Pertaining to Part V of the Legislation) (s.143) | 2012 | 5 | 5 | 7 | 0 | 1 | 0 | 4 | 2 | 0 | 3 | 1 |
| | 2011 | 4 | 9 | 8 | 0 | 0 | 0 | 4 | 4 | 0 | 5 | 1 |
| Miscellaneous | 2012 | 40 | 95[1] | 105[2] | 0 | 10 | 30 | 45 | 20 | 0 | 30 | 10 |
| | 2011 | 28 | 65[3] | 53[4] | 1 | 6 | 15 | 21 | 10 | 0 | 40 | 3 |
| | | | | | | | | | | | | |
| **Total** | **2012** | **463** | **2217** | **2260** | **39** | **225** | **393** | **1082** | **245** | **276** | **420** | **313[5]** |
| | **2011** | **394** | **1588** | **1519** | **36** | **177** | **293** | **571** | **230** | **212** | **463** | **276[6]** |

NOTE: The sections quoted are from the *Labour Relations Code* unless otherwise indicated.

[1] Includes five stay applications.
[2] Includes six stay applications (six were dismissed).
[3] Includes five stay applications.
[4] Includes three stay applications (two were dismissed and one was granted).
[5] 313 applications disposed of in 2012 were heard sometime during the process. In 2012, the Board held 226 hearings (including 164 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2012.
[6] 276 applications disposed of in 2011 were heard sometime during the process. In 2011, the Board held 231 hearings (including 179 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2011.

**Chart 1: Number of Applications and Complaints FILED in 2012 - by Type of Application/Complaint**

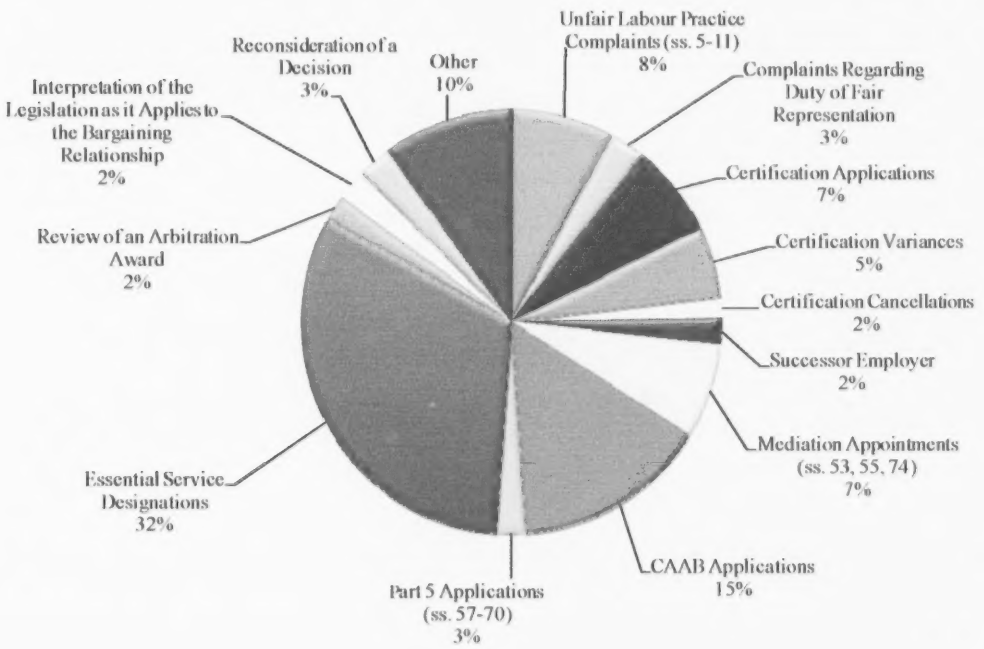

Unfair Labour Practice Complaints (ss. 5-11) 8%
Complaints Regarding Duty of Fair Representation 3%
Certification Applications 7%
Certification Variances 5%
Certification Cancellations 2%
Successor Employer 2%
Mediation Appointments (ss. 53, 55, 74) 7%
CAAB Applications 15%
Part 5 Applications (ss. 57-70) 3%
Essential Service Designations 32%
Review of an Arbitration Award 2%
Interpretation of the Legislation as it Applies to the Bargaining Relationship 2%
Reconsideration of a Decision 3%
Other 10%

**TABLE 1A: Certification Applications and Certification Cancellations Under s. 33(2) Granted in 2012 - Analyzed by Industry**

| Type of Industry | Certification Applications | | Certification Cancellations[1] | |
|---|---|---|---|---|
| | Number of Applications Granted | Number of Employees[2] | Number of Applications Granted | Number of Employees[3] |
| Accommodation, Food and Beverage Services | -- | -- | 1 | 6 |
| Agricultural and Related Services | 1 | 21 | -- | -- |
| Business Services | 1 | 11 | -- | -- |
| Construction | 11 | 140 | 4 | 94 |
| Educational Services | 1 | 29 | -- | -- |
| Fishing and Trapping | 1 | 6 | -- | -- |
| Government Services | 1 | 5 | -- | -- |
| Health and Social Services | 27 | 8078 | 4 | 138 |
| Manufacturing | 6 | 153 | 3 | 61 |
| Retail Trade | 3 | 50 | 2 | 43 |
| Real Estate Operators and Insurance Agents | 1 | 5 | -- | -- |
| Transportation and Storage | 4 | 122 | 2 | 44 |
| Other Services | 10 | 149 | 5 | 30 |
| | | | | |
| **Total** | **67** | **8769** | **21** | **416** |

[1] In order to accurately reflect the number of employees per granted application, only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the total number of applications granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of Certification Cancellations by applicant type.

[2] The number of employees on an application for certification is based on the information supplied by the union on the application form.

[3] The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer.

**Chart 1A: Certification Applications Granted - Analyzed by Type of Industry (Number of Applications)**

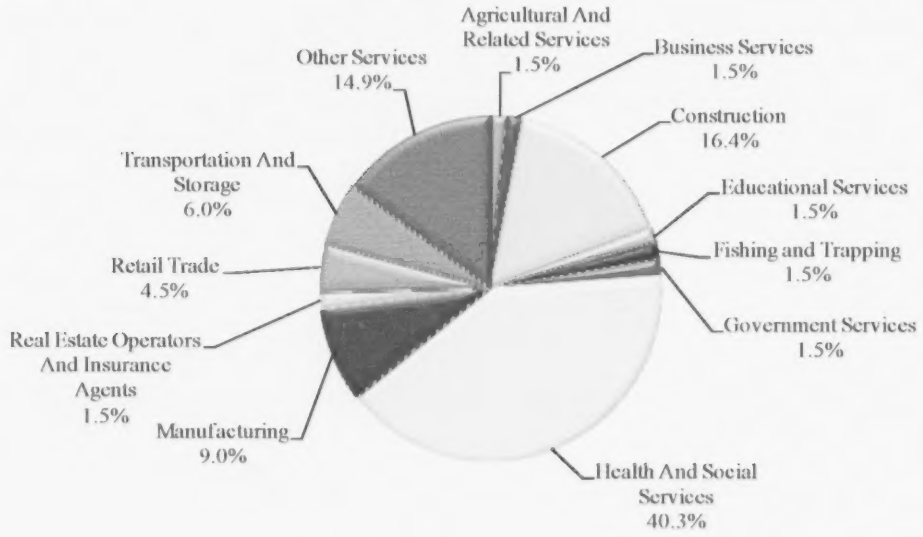



**Chart 1B: Certification Applications Granted - Analyzed by Type of Industry (Number of Employees)**

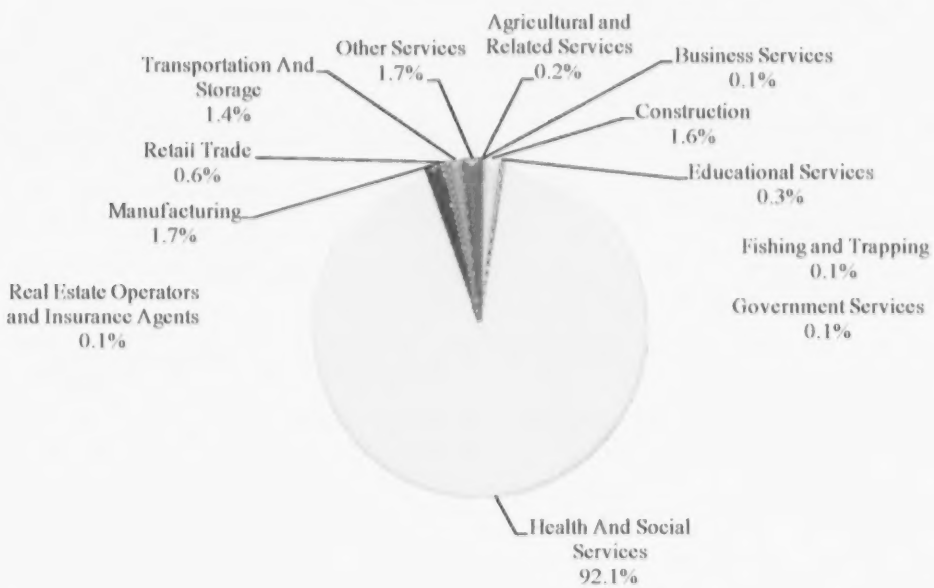


**Chart 1C: Certification Cancellations (s.33(2)) Granted - Analyzed by Type of Industry (Number of Applications)**

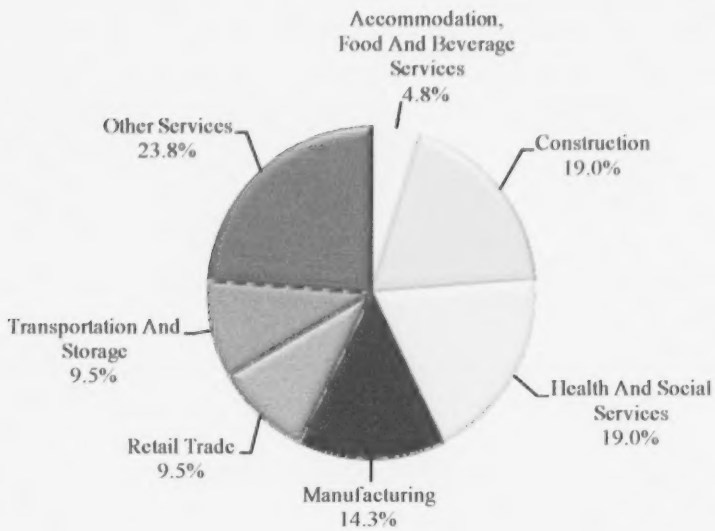



**Chart 1D: Certification Cancellations (s.33(2)) Granted - Analyzed by Type of Industry (Number of Employees)**

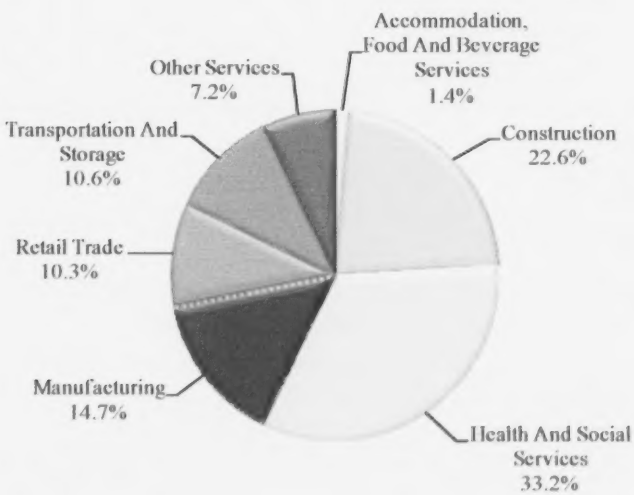


**TABLE 1B: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Granted in 2012 - Analyzed by Union**

| UNION NAME (Names have been abbreviated where possible, the commonly used, shortened form appears) | Certification Applications | | Certification Cancellations[1] | |
|---|---|---|---|---|
| | Number of Applications Filed[2] | Number of Applications Granted | Number of Applications Filed[2] | Number of Applications Granted |
| BCGEU (not including Brewery Workers) | 19 | 11 | 4 | 4 |
| Boilermakers | 1 | 0 | 0 | 0 |
| Carpenters (not including CMAW or CAST councils) | 3 | 2 | 1 | 1 |
| Canada West Construction Union (CWCU) | 1 | 0 | 0 | 0 |
| CAW | 2 | 1 | 1 | 0 |
| CEP | 6 | 4 | 1 | 1 |
| CLAC | 3 | 1 | 1 | 0 |
| CUPE | 5 | 2 | 1 | 1 |
| Elevator Constructors | 1 | 0 | 0 | 0 |
| Electrical Workers (IBEW) | 3 | 2 | 1 | 1 |
| Food and Commercial Workers (UFCW) | 8 | 3 | 1 | 2 |
| Glazier & Glass Workers | 0 | 0 | 1 | 1 |
| Heat and Frost | 3 | 3 | 0 | 0 |
| Hospital Employees Union (HEU) | 7 | 6 | 1 | 1 |
| Hotel Employees | 0 | 0 | 2 | 2 |
| IATSE | 0 | 1 | 1 | 1 |
| Iron Workers | 1 | 1 | 3 | 0 |
| Labourers | 2 | 1 | 0 | 0 |
| Machinists and Aerospace Workers | 1 | 0 | 3 | 2 |
| Marine Workers | 1 | 0 | 0 | 0 |
| Millwrights | 1 | 1 | 0 | 0 |
| Musicians | 1 | 1 | 0 | 0 |
| Nurses (BCNU) | 56 | 10 | 0 | 0 |

**TABLE 1B: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Granted in 2012 - Analyzed by Union**

| UNION NAME (Names have been abbreviated: where possible, the commonly used, shortened form appears) | Certification Applications | | Certification Cancellations[1] | |
|---|---|---|---|---|
| | Number of Applications Filed[2] | Number of Applications Granted | Number of Applications Filed[2] | Number of Applications Granted |
| Office and Professional Employees (COPE) | 6 | 3 | 0 | 0 |
| Operating Engineers (IUOE) | 2 | 0 | 0 | 0 |
| Painters (not including Glaziers 1527) | 1 | 1 | 0 | 0 |
| Plumbers & Refrigeration Workers | 3 | 1 | 0 | 0 |
| Post-Secondary Educators (FPSE) | 2 | 1 | 0 | 0 |
| PPWC | 2 | 3 | 0 | 0 |
| Service Employees (SEIU) | 3 | 0 | 1 | 0 |
| Steelworkers | 5 | 3 | 2 | 1 |
| Teamsters | 2 | 0 | 3 | 3 |
| West Coast Truckers | 5 | 4 | 0 | 0 |
| Single Employer Independent Union | 1 | 1 | 0 | 0 |
| | | | | |
| **Total** | **157** | **67** | **28** | **21** |

[1] Only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the number of applications filed and/or granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

[2] Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

**TABLE 2: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Decided in 2012**

| Type of Application | | Filed[1] | Granted | Dismissed | Total Decided |
|---|---|---|---|---|---|
| Total Certification Applications | Number of Applications | 157 | 67 | 23 | 90 |
| | Number of Employees[2] | 5683 | 8769 | 1298 | 10 067 |
| *Certification Applications for Previously Unorganized Employees* | Number of Applications | 96 | 54 | 17 | 71 |
| | Number of Employees | 3417 | 1483 | 762 | 2245 |
| *Certification Applications for Organized Employees* | Number of Applications | 61 | 13 | 6 | 19 |
| | Number of Employees | 2266 | 7286 | 536 | 7822 |
| Total Applications to Cancel a Certification Brought by Employees under s. 33(2)[3] | Number of Applications | 28 | 21 | 3 | 24 |
| | Number of Employees[4] | 458 | 416 | 52 | 468 |

[1] Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

[2] The number of employees on an application for certification is based on the information supplied by the union on the application form. Variances do occur between the time of application and the time of disposition of the application. The estimate could include some multiple counting where more than one union applied to cover the same group of employees, or where the same union made alternative applications to cover the same group of employees.

[3] Since only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table, the number of applications filed and/or decided may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

[4] The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer. The number of employees on an application for which a Return of Poll is either not available or not applicable (in particular, for the number of applications Filed) is based on the bargaining unit size listed in the report of the Industrial Relations Officer.

**TABLE 2A: Certification Applications and Certification Cancellations Under s. 33(2) Granted in 2012 - Analyzed by the Size of the Bargaining Unit**

| Size of Bargaining Unit (Number of Employees) | Certification Applications | | Certification Cancellations[1] | |
|---|---|---|---|---|
| | Number of Applications Granted | Percentage of Applications Granted | Number of Applications Granted | Percentage of Applications Granted |
| 1 to 10 | 21 | 31% | 12 | 57% |
| 11 to 20 | 16 | 24% | 3 | 14% |
| 21 to 30 | 8 | 12% | 1 | 5% |
| 31 to 40 | 3 | 4% | 2 | 10% |
| 41 to 50 | 4 | 6% | 2 | 10% |
| 51 to 60 | 3 | 4% | 0 | 0% |
| 61 to 70 | 0 | 0% | 0 | 0% |
| 71 to 80 | 1 | 2% | 0 | 0% |
| 81 to 90 | 0 | 0% | 0 | 0% |
| 91 to 100 | 0 | 0% | 0 | 0% |
| 101 to 200 | 3 | 5% | 1 | 5% |
| Over 200 | 8 | 12% | 0 | 0% |
| | | | | |
| **Total** | **67** | **100%** | **21** | **100%** |

[1] In order to accurately reflect the number of employees per granted application, only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the total number of applications granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of Certification Cancellations by applicant type.

**Chart 2A: Certification Applications Granted in 2012**
**Analyzed by Size of Bargaining Unit (Percentage of Applications)**

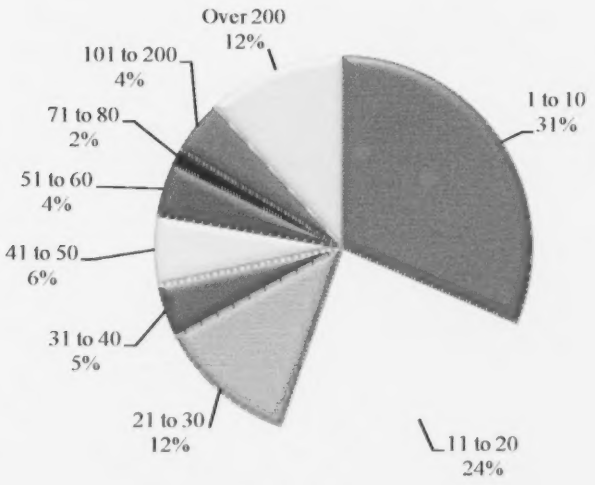



**Chart 2B: Certification Cancellations (s.33(2)) Granted in 2012**
**Analyzed by Size of Bargaining Unit (Percentage of Applications)**

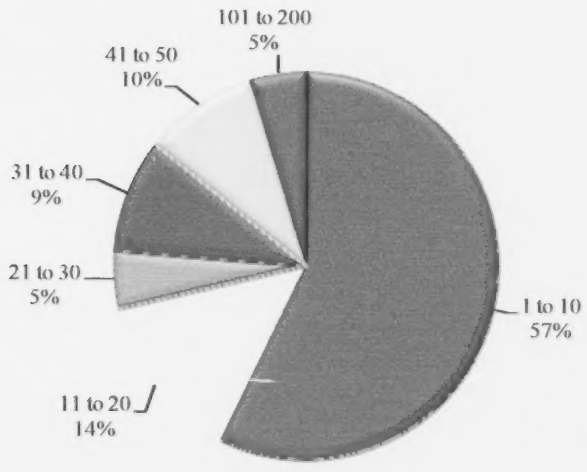


**TABLE 2B: Certification Applications Granted Between 1990 and 2012 by Size of the Bargaining Unit**

| Year | Number and Percentage of Certification Applications | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 to 20 Employees | | 21 to 50 Employees | | Over 50 Employees | | Total |
| 1990 | 181 | 72.4% | 47 | 18.8% | 22 | 8.8% | 250 |
| 1991 | 173 | 70.9% | 47 | 19.3% | 24 | 9.8% | 244 |
| 1992 | 130 | 66.0% | 47 | 23.9% | 20 | 10.1% | 197 |
| 1993 | 353 | 69.4% | 102 | 20.0% | 54 | 10.6% | 509 |
| 1994 | 292 | 66.9% | 86 | 19.7% | 59 | 13.4% | 437 |
| 1995 | 253 | 64.4% | 100 | 25.4% | 40 | 10.2% | 393 |
| 1996 | 312 | 72.5% | 80 | 18.6% | 38 | 8.9% | 430 |
| 1997 | 285 | 69.6% | 71 | 17.4% | 53 | 13.0% | 409 |
| 1998 | 233 | 67.0% | 65 | 18.7% | 50 | 14.3% | 348[1] |
| 1999 | 239 | 65.8% | 65 | 17.9% | 59 | 16.3% | 363[2] |
| 2000 | 169 | 64.3% | 45 | 17.1% | 49 | 18.6% | 263 |
| 2001 | 105 | 58.0% | 40 | 22.1% | 36 | 19.9% | 181 |
| 2002 | 62 | 70.4% | 13 | 14.8% | 13 | 14.8% | 88 |
| 2003 | 54 | 72.0% | 11 | 14.7% | 10 | 13.3% | 75[3] |
| 2004 | 58 | 65.9% | 17 | 19.3% | 13 | 14.8% | 88 |
| 2005 | 170 | 63.9% | 62 | 23.3% | 34 | 12.7% | 266[4] |
| 2006 | 58 | 65.2% | 21 | 23.6% | 10 | 11.2% | 89 |
| 2007 | 72 | 59.5% | 26 | 21.5% | 23 | 19.0% | 121 |
| 2008 | 62 | 64.6% | 13 | 13.5% | 21 | 21.9% | 96 |
| 2009 | 43 | 48.9% | 20 | 22.7% | 25 | 28.4% | 88 |
| 2010 | 42 | 58.3% | 13 | 18.1% | 17 | 23.6% | 72 |
| 2011 | 34 | 58.6% | 15 | 25.8% | 9 | 15.5% | 58[5] |
| 2012 | 37 | 55.2% | 15 | 22.4% | 15 | 22.4% | 67 |

[1] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1998 amounts to 349.

[2] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1999 amounts to 364.

[3] Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of new certifications granted for a bargaining unit size between 1 and 20 employees is 50 and the total number of certifications granted in 2003 is 71.

[4] A number of applications to certify separate units were amended at some time in the process prior to disposition to certify a consolidated unit(s). A further application was granted and two certifications issued as a result. In total, in 2005, 266 certification applications were granted resulting in 249 certifications being issued.

[5] Three certification applications to certify separate units were amended at some time in the process prior to disposition to certify a consolidated unit (a single certification was issued as a result). In total, in 2011, 58 certification applications were granted resulting in 56 certifications being issued.

| TABLE 3: Applications to Cancel Certifications Disposed of in 2012 and 2011 | | | | | | |
|---|---|---|---|---|---|---|
| Type of Applicant (and Application) | Year | Granted | Dismissed | Not Proceeded With | Withdrawn | Total |
| Filed by Employee(s) (s. 33) | 2012 | 21 | 3 | 4 | 5 | 33 |
| | 2011 | 22 | 8 | 2 | 1 | 33 |
| Filed by Employee(s) (s. 142 - Partial Decertification)[1] | 2012 | 2 | 4 | 0 | 2 | 8 |
| | 2011 | 3 | 3 | 0 | 1 | 7 |
| Filed by Employer(s) | 2012 | 1 | 0 | 0 | 0 | 1 |
| | 2011 | 1 | 0 | 0 | 0 | 1 |
| Filed by Union(s) | 2012 | 2 | 0 | 0 | 0 | 2 |
| | 2011 | 3 | 0 | 0 | 0 | 3 |
| Filed by Employer(s) / Union(s) | 2012 | 1 | 0 | 0 | 0 | 1 |
| | 2011 | 1 | 0 | 0 | 0 | 1 |
| | | | | | | |
| **Total** | **2012** | **27** | 7 | **4** | 7 | **45** |
| | **2011** | **30** | **11** | **2** | **2** | **45** |

[1] Applications filed under s. 142 for Partial Decertification are included in TABLE 1 under the category Certification Variances; therefore, subtracting the number of applications filed by employees under s. 142 from the Total number of applications disposed of in TABLE 3 will equal the number of applications disposed of in TABLE 1 for the Certification Cancellations category.

**TABLE 4: Reconsiderations Disposed of in 2012**

| Type Of Application Being Reconsidered | Leave Denied | Dismissed | Granted | Withdrawn | Not Proceeded With | Total |
|---|---|---|---|---|---|---|
| Duty of Fair Representation (s. 12) | 12 | 1 | 3 | 1 | 0 | 17 |
| Other Unfair Labour Practice Complaint (ss. 5-9) | 1 | 0 | 2 | 0 | 0 | 3 |
| Certification | 6 | 1 | 2 | 0 | 0 | 9 |
| Partial Decertification | 0 | 2 | 2 | 0 | 0 | 4 |
| Declaration of Employer Successor Status | 1 | 0 | 0 | 0 | 0 | 1 |
| Common Employer | 1 | 0 | 0 | 0 | 0 | 1 |
| Last Offer Vote | 1 | 0 | 1 | 0 | 0 | 2 |
| Review of Arbitration Award | 9 | 0 | 3 | 0 | 0 | 12 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139) | 2 | 0 | 0 | 0 | 0 | 2 |
| Declaratory Opinion | 2 | 0 | 0 | 0 | 0 | 2 |
| Ruling re: Procedure | 1 | 0 | 0 | 1 | 0 | 2 |
| Ruling re: Remedy | 0 | 0 | 1 | 0 | 0 | 1 |
| Ruling re: Variance of Essential Services Designation Order | 1 | 0 | 0 | 0 | 0 | 1 |
| Ruling re: Preliminary Objection | 1 | 0 | 0 | 0 | 0 | 1 |
| Ruling re: Interim Order Filed in Court | 0 | 0 | 1 | 0 | 0 | 1 |
| | | | | | | |
| **TOTAL** | **38** | **4** | **15** | **2** | **0** | **59** |

| Appellant | Leave Denied | Dismissed | Granted | Withdrawn | Not Proceeded With | Total |
|---|---|---|---|---|---|---|
| Employer(s) | 11 | 1 | 3 | 0 | 0 | 15 |
| Union(s) | 11 | 1 | 10 | 0 | 0 | 22 |
| Employee(s) | 16 | 2 | 2 | 2 | 0 | 22 |
| | | | | | | |
| **TOTAL** | **38** | **4** | **15** | **2** | **0** | **59** |

**Chart 4: Types of Applications Being Reconsidered (Disposed of in 2012)**

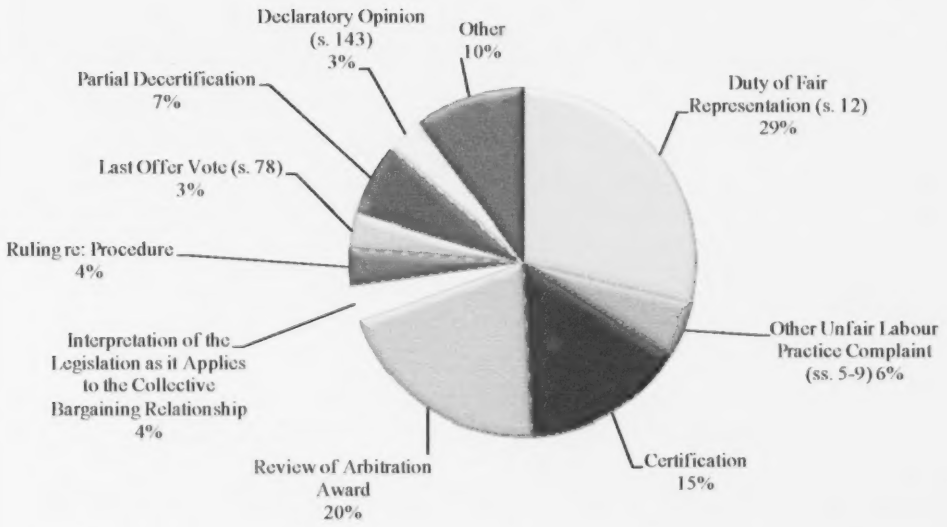

Declaratory Opinion (s. 143) 3%
Other 10%
Partial Decertification 7%
Duty of Fair Representation (s. 12) 29%
Last Offer Vote (s. 78) 3%
Ruling re: Procedure 4%
Other Unfair Labour Practice Complaint (ss. 5-9) 6%
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship 4%
Certification 15%
Review of Arbitration Award 20%

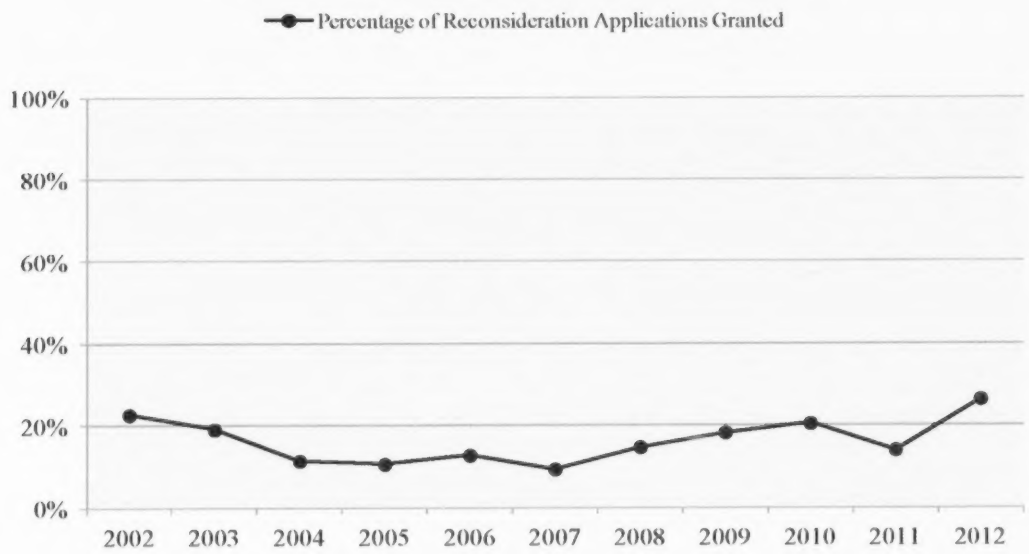
**TABLE 5: "Success" Rate of Reconsiderations Disposed of Between 2002 and 2012**

| Year | Total Applications Disposed of | Withdrawn / Not Proceeded With | Processed to a Final Decision | Resulted in a Revision of the Original Decision | "Success" Rate of Reconsiderations |
|---|---|---|---|---|---|
| 2002 | 92 | 8 | 84 | 19 | 23% |
| 2003 | 111 | 11 | 100 | 19 | 19% |
| 2004 | 112 | 6 | 106 | 12 | 11% |
| 2005 | 87 | 11 | 76 | 8 | 11% |
| 2006 | 72 | 9 | 63 | 8 | 13% |
| 2007 | 65 | 11 | 54 | 5 | 9% |
| 2008 | 47 | 6 | 41 | 6 | 15% |
| 2009 | 48 | 4 | 44 | 8 | 18% |
| 2010 | 51 | 2 | 49 | 10 | 20% |
| 2011 | 45 | 2 | 43 | 6 | 14% |
| 2012 | 59 | 2 | 57 | 15 | 26% |

**TABLE 6: "Success" Rate of Reviews of Arbitration Awards Disposed of Between 2002 and 2012**

| Year | Total Applications Disposed of | Withdrawn / Not Proceeded With | Processed to a Final Decision | Resulted in a Revision of the Original Decision | "Success" Rate of Reconsiderations |
|---|---|---|---|---|---|
| 2002 | 58 | 4 | 54 | 12 | 22% |
| 2003 | 55 | 7 | 48 | 10 | 21% |
| 2004 | 58 | 8 | 50 | 11 | 22% |
| 2005 | 36 | 4 | 32 | 6 | 19% |
| 2006 | 50 | 7 | 43 | 11 | 26% |
| 2007 | 26 | 3 | 23 | 5 | 22% |
| 2008 | 37 | 7 | 30 | 7 | 23% |
| 2009 | 39 | 6 | 33 | 4 | 12% |
| 2010 | 31 | 5 | 26 | 8 | 31% |
| 2011 | 35 | 8 | 27 | 2 | 7% |
| 2012 | 59 | 4 | 55 | 7 | 13% |

## Chart 5: "Success" Rate - Reconsiderations




## Chart 6: "Success" Rate - Review of Arbitration Award

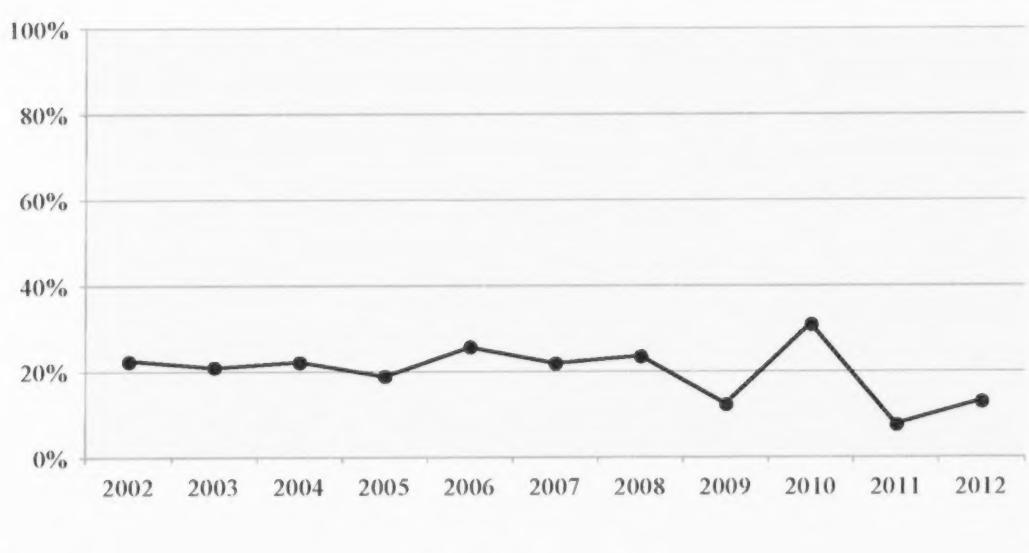


**TABLE 7: Applications and Complaints Filed in 2012 - Analyzed by Applicant Type**

| Type of Application | Filed by Employer(s) | Filed by Union(s) | Filed by Employee(s) | Other | Total[1] |
|---|---|---|---|---|---|
| Complaints of Unfair Labour Practices | | | | | |
| *Complaints Regarding Internal Union Affairs (s. 10)* | 0 | 0 | 8 | 0 | 8 |
| *Complaints Regarding Duty to Bargain in Good Faith (s. 11)* | 6 | 26 | 0 | 0 | 32 |
| *Complaints Regarding Duty of Fair Representation (s. 12)* | 0 | 0 | 61 | 0 | 61 |
| *Other Unfair Labour Practice Complaints (ss. 5-9)* | 8 | 120 | 18 | 0 | 136 |
| Religious Exemption (s. 17) | 0 | 0 | 10 | 0 | 10 |
| Certification Applications (ss. 18, 19 and 28) | 0 | 157 | 0 | 0 | 157 |
| Certification Variances (ss. 28 and 142) | 12 | 98 | 9 | 0 | 118 |
| Certification Cancellations (ss. 33 and 142) | 2 | 4 | 32 | 0 | 37 |
| Cancellation of a Voluntary Recognition (s. 34) | 0 | 1 | 7 | 0 | 8 |
| Permission to Alter Conditions of Employment | 1 | 0 | 0 | 0 | 1 |
| Alleged Unlawful Alteration of Employment Terms and Conditions (ss. 32 and 45) | 0 | 15 | 0 | 0 | 15 |
| Declaration of Successor Status | | | | | |
| *Successor Employer (s. 35)* | 5 | 38 | 0 | 0 | 43 |
| *Successor Union (s. 37)* | 0 | 21 | 0 | 0 | 21 |
| Common Employer (s. 38) | 0 | 8 | 0 | 0 | 8 |
| Accreditation Variances (ss. 43 and 142) | 1 | 0 | 0 | 0 | 1 |
| Alleged Failure to Execute or Comply with a Collective Agreement (s. 49) | 0 | 7 | 0 | 0 | 7 |
| Facilitator (s. 53(3)) | 21 | 21 | 0 | 0 | 23 |
| First Collective Agreement (s. 55) | 3 | 4 | 0 | 0 | 7 |
| Appointment of a Mediation Officer (s. 74) | 49 | 86 | 0 | 0 | 131 |
| Collective Agreement Arbitration Bureau (CAAB) | | | | | |
| *Section 86 (Appointment of Arbitrator)* | *0* | *86* | *0* | *0* | *86* |
| *Section 87 (Appointment of Settlement Officer)* | *6* | *33* | *0* | *0* | *39* |
| *Section 104 (Appointment of Arbitrator)* | *2* | *200* | *0* | *0* | *202* |
| *Section 105 (Appointment of Mediator-Arbitrator)* | *2* | *2* | *0* | *0* | *2* |
| ***Combined CAAB Sections*** | ***10*** | ***321*** | ***0*** | ***0*** | ***329*** |
| Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss. 57-67 and ss. 69-70) | 41 | 6 | 0 | 0 | 47 |

**TABLE 7: Applications and Complaints Filed in 2012 - Analyzed by Applicant Type**

| Type of Application | Filed by Employer(s) | Filed by Union(s) | Filed by Employee(s) | Other | Total[1] |
|---|---|---|---|---|---|
| Replacement Workers (s. 68) | 0 | 5 | 0 | 0 | 5 |
| Essential Service Designations (s. 72) | 0 | 0 | 0 | 708 | 708 |
| Last Offer Vote (s. 78) | 12 | 0 | 0 | 0 | 12 |
| Review of Arbitration Award (s. 99) | 16 | 12 | 15 | 0 | 43 |
| Interim Order (s. 133(5)) | 6 | 8 | 0 | 0 | 14 |
| File an Order in Supreme Court (s. 135) | 19 | 5 | 1 | 0 | 25 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139) | 5 | 47 | 0 | 0 | 52 |
| Reconsideration of a Decision (s. 141) | 18 | 20 | 19 | 1 | 58 |
| Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation) | 1 | 4 | 0 | 0 | 5 |
| Miscellaneous | 33 | 59 | 2 | 2 | 95 |
| | | | | | |
| **TOTAL** | **269** | **1093** | **182** | **711** | **2217** |

[1] Totals by applicant do not equate with total applications because certain applications were filed jointly, by more than one type of party.

| TABLE 8: Time Required to Process Certain Applications Disposed of in 2012 | | | |
|---|---|---|---|
| Type of Application | Number of Applications Disposed of[1] | Average Number of Days | Median Number of Days |
| Unfair Labour Practice Complaints Under S.6 of the *Labour Relations Code* Where a Dismissed Employee is Involved | 22 | 73 | 44.5 |
| Complaints Regarding Duty of Fair Representation (S.12) | 51 | 227 | 132 |
| Certification Applications (Ss.18, 19, 28) | 149 | 518 | 25 |
| Certification Cancellations (S.33(2)) | 29 | 28 | 12 |
| Declaration of Successor Employer (S.35) | 53 | 115 | 41 |
| Common Employer (S.38) | 8 | 400 | 146.5 |
| Review of Arbitration Award (S.99) | 58 | 136 | 105 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (S.139) | 54 | 225 | 87 |
| Reconsideration of a Decision (S.141) | 59 | 50 | 23 |

[1] Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

**TABLE 9: Officer Assignments Completed in 2012**

| | Assignment Outcome | | | | | | |
|---|---|---|---|---|---|---|---|
| Type of Application / Complaint | Settled/ Withdrawn | Resolved Issues / Assisted at Hearing | Narrowed Issues /Assisted at Hearing | To Adjudication (No Informal) | Report of Investigation | Other[1] | Total |
| Part V (ss.57 to 70)[2] | 4 | 3 | 2 | 3 | 0 | 1 | 13 |
| Unfair Labour Practice (ss.5 to 11)[3] | 34 | 0 | 7 | 21 | 0 | 0 | 62 |
| Certification & Variance to Expand the Bargaining Unit[4] | 11 | 27 | 33 | 3 | 0 | 0 | 74 |
| Decertification & "Partial Decertification"[5] | 6 | 4 | 8 | 0 | 0 | 0 | 18 |
| Collective Agreement Arbitration (CAAB) (ss.86, 87, 104, 105)[6] | 45 | 0 | 0 | 0 | 0 | 21[7] | 66 |
| Other | 29 | 2 | 3 | 9 | 26 | 1 | 70 |
| | | | | | | | |
| **TOTAL** | **129** | **36** | **53** | **36** | **26** | **23** | **303** |

[1] Includes Consent Order issued.
[2] Includes complaints regarding strikes, lockouts, picketing, etc.
[3] Excludes duty of fair representation (s.12)
[4] In reports prior to 2001, the number of certification & expanded bargaining unit applications Settled / Withdrawn were included in the Resolved Issues / Assisted at Hearing assignment outcome category.
[5] Prior to 2003 applications for 'partial decertification' were included under Other types of applications.
[6] Reporting of assignments under the Collective Agreement Arbitration provisions of the *Labour Relations Code* first appears in the 2003 annual report.
[7] Includes 15 assignments closed with matter proceeding to arbitration.

**TABLE 10: Requests for Automatic Certification Pursuant to s. 14(4)(f) of the *Labour Relations Code* as a Result of an Alleged Unfair Labour Practice Violation**
(Previously s. 8(4)(c) of the *Labour Relations Code* and the *Industrial Relations Act*)

| Year | Requested | Granted |
|---|---|---|
| 1977 | 25 | 1 |
| 1978 | 17 | 1 |
| 1979 | 25 | 1 |
| 1980 | 22 | 0 |
| 1981 | 34 | 2 |
| 1982 | 15 | 2 |
| 1983 | 18 | 0 |
| 1984 | 21 | 3 |
| 1985 | 16 | 2 |
| 1986 | 18 | 2 |
| 1987 | 17 | 0 |
| 1988 | 10 | 0 |
| 1989 | 10 | 0 |
| 1990 | 18 | 3 |
| 1991 | 20 | 1 |
| 1992 | 32 | 6 |
| 1993 | 31 | 2 |
| 1994 | 31 | 2 |
| 1995 | 35 | 0 |
| 1996 | 41 | 1 |
| 1997 | 52 | 3 |
| 1998 | 40 | 0 |
| 1999 | 51 | 0 |
| 2000 | 21 | 1 |
| 2001 | 9 | 0 |
| 2002 | 12 | 3 |
| 2003 | 13 | 0 |
| 2004 | 8 | 1 |
| 2005 | 7 | 1 |
| 2006 | 8 | 0 |
| 2007 | 10 | 1 |
| 2008 | 17 | 2 |
| 2009 | 16 | 0 |

**TABLE 10: Requests for Automatic Certification Pursuant to s. 14(4)(f) of the *Labour Relations Code* as a Result of an Alleged Unfair Labour Practice Violation**
(Previously s. 8(4)(c) of the *Labour Relations Code* and the *Industrial Relations Act*)

| Year | Requested | Granted |
|---|---|---|
| 2010 | 18 | 1 |
| 2011 | 9 | 0 |
| 2012 | 9 | 3[1] |
| **TOTAL** | **756** | **45** |

These requests relate to *Other Unfair Labour Practice Complaints* and are not included under Applications for Certification.
Note: Figures for 1993 to 1995 were not included in the Annual Reports for these years.

[1] One certification issued as a result of reconsideration.

**Chart 10: Requests for Automatic Certification Pursuant to s.14(4)(f) of the *Labour Relations Code* Filed and Granted**

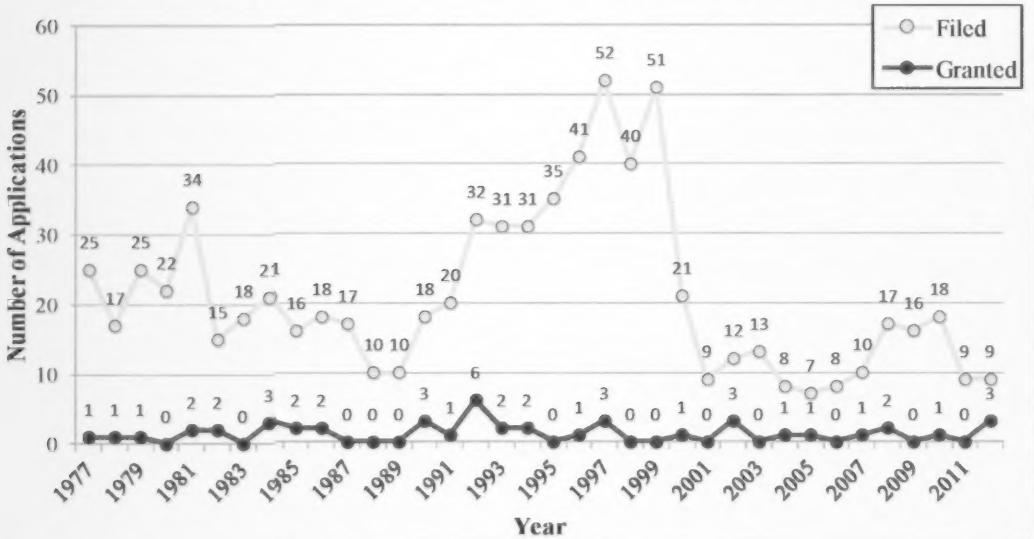


**Table 11: Complaints Regarding Duty of Fair Representation Disposed of Between 2002 and 2012**

| Year | Total Applications Disposed of | Not Proceeded With | Settled | Processed to a Final Decision | Granted | Dismissed |
|---|---|---|---|---|---|---|
| 2002 | 186 | 62 | 35 | 89 | 1 | 88 |
| 2003 | 192 | 53 | 28 | 111 | 5 | 106 |
| 2004 | 132 | 40 | 13 | 79 | 8 | 71 |
| 2005 | 101 | 44 | 10 | 47 | 5 | 42 |
| 2006 | 99 | 34 | 9 | 56 | 1 | 55 |
| 2007 | 90 | 39 | 9 | 42 | 0 | 42 |
| 2008 | 70 | 29 | 7 | 34 | 2 | 32 |
| 2009 | 96 | 36 | 1 | 59 | 5 | 54 |
| 2010 | 82 | 26 | 5 | 51 | 5 | 46 |
| 2011 | 74 | 17 | 1 | 56 | 4 | 52 |
| 2012 | 75 | 24 | 2 | 49 | 2 | 47 |